

**ARIZONA SUPREME COURT  
ADMINISTRATIVE OFFICE OF THE COURTS  
INVESTIGATION SUMMARY and PROBABLE CAUSE ANALYSIS  
and DETERMINATION REPORT**

<b>CERTIFICATE HOLDER/LICENSEE INFORMATION</b>	<b>Certificate/License Holder:</b>	Jeannean Sabatina
	<b>Certificate/License Number:</b>	20615
	<b>Certificate/License Holder:</b>	Nicole Sabatina
	<b>Certificate/License Number:</b>	20684
	<b>Business Name:</b>	With Love, Jeannean, LLC
	<b>Certificate/License Number:</b>	N/A
	<b>Type of Certificate/License:</b>	Individual Fiduciary Individual Fiduciary
<b>COMPLAINANT</b>	<b>Name:</b>	Director Initiated Complaint
<b>INVESTIGATION INFORMATION</b>	<b>Complaint Number:</b>	17-0027/17-0028
	<b>Investigators:</b>	Pasquale Fontana Sheryll Prokop
<b>Complaint Received:</b>		Director Initiated Complaint
<b>Complaint Forwarded to the Certificate Holder:</b>		November 3, 2017
<b>Certificate Holder/Licensee Received Complaint:</b>		November 6, 2017
<b>Request for Extension of Time to Respond:</b>		November 14, 2017
<b>Response From Certificate Holder:</b>		December 29, 2017
<b>Period of Active Certification/Licensure:</b>		July 9, 2009 – Present (Jeannean Sabatina) June 1, 2012 – Present (Nicole Sabatina)
<b>Status of Certification/License:</b>		Active
<b>Availability of Certificate Holder/Licensee:</b>		Available
<b>Availability of Complainant:</b>		N/A
<b>Report Date:</b>		June 22, 2018

**ALLEGATIONS:**

1. Jeannean and Nicole engaged in self-dealing and/or the appearance of self-dealing and conflict of interest impropriety and/or the appearance of conflict of interest and impropriety.
2. Jeannean and Nicole filed misleading or false Estate Budgets with the Court.
3. Jeannean and Nicole filed misleading or false Affidavit of Persons to be Appointed Guardian and/or Conservator with the Court.
4. Jeannean and Nicole exceeded judicially approved Estate budgets and failed to timely file amended Estate budgets and seek judicial authority to exceed approved budgets.
5. Jeannean and Nicole failed to comply with the Arizona Statewide Fee Guidelines set out in ACJA §3-303.

6. Jeannean and Nicole restricted the family and friends of wards and vulnerable persons from visiting and/or contacting the ward/vulnerable person.
7. Jeannean and Nicole transacted business under an assumed name.
8. Jeannean and Nicole failed to report violations of fiduciary misconduct, in violation of ACJA § 7-202(F)(10):

## **INTRODUCTION:**

The Certification and Licensing Division ("Division") received complaints (17-0008/17-0009; 17-0024/17-0025) from the community against licensed fiduciaries, Jeannean Sabatina ("Jeannean") and Nicole Sabatina ("Nicole"), owners and operators of non-licensed business entity, With Love, Jeannean, LLC ("WLJ"). In addition to the complaints received by the Division, a Director Initiated Complaint (17-0027/17-0028) was filed.

In brief, complaint numbers 17-0008/17-0009 contained allegations including, but not limited to, Jeannean and Nicole, prior to Court appointment as guardian or conservator, conducted themselves in an unprofessional manner. Complainant alleged that the fiduciaries behaved in an unethical and aggressive manner including changing locks on proposed ward, Janette's, residence without authority to do so and moved Janette from an assisted living facility of her choosing into a "locked down" memory care unit contrary to her preferences and needs. Complainant alleged the fiduciaries restricted or denied contact with family and friend after placing Janette in a memory care facility.

Complaint numbers 17-0024/17-0025 alleged fiduciary misconduct including, but not limited to, that the fiduciary accounting was not "in accordance with the outline of the Personal Care Services Fee Description that was submitted to the Court...Plus, the accounting inventories were unorganized and inaccurate with numerous discrepancies" as to the management of the estate. Complainant asked why the estate was charged for "copies made, frivolous communication between staff, record management, and mileage?" Complainant was concerned with the fiduciary's fees and the attorney's fees.

The Director Initiated Complaint, 17-0027/17-0028, included concerns that Jeannean and Nicole restricted or denied contact between vulnerable individuals and family and friends, failed to protect estates from incurring unreasonable and unnecessary costs, did not comply with the Arizona Statewide Fee Guidelines ("Fee Guidelines") set out in ACJA §3-303, exceeded Court-approved estate budgets and did not timely file amended budgets and seek judicial approval prior to exceeding Court-approved expenditures.

The Division's investigation included interviews with witnesses; the fiduciaries and their attorneys, Matthew Gobbato ("Gobbato") and Zachary Mushkatel ("Mushkatel"); reviewing documentation provided by Complainants, witnesses and the fiduciaries and their attorneys; reviewing Court records; and attending probate hearings.

### Persons Interviewed:

1. John D'Arco
2. Denina Geistlinger
3. Dennis Myers
4. Eileen Morris
5. Benjamin Rolof
6. Bonnie Lazzell
7. Randall Bragg
8. Joanna Dockstader
9. Kathy Loscheider
10. Jean Martin
11. Karen Cooley
12. Kaycee Rees
13. Ronald Cooley
14. Kendyl Greene
15. Michael Strauber
16. Marcia Lynks
17. Kari Robinson
18. Laura Taylor
19. Beverly Love
20. Sheila Clark
21. Sylvia Mulshine
22. Jeannean Sabatina
23. Nicole Sabatina
24. Judy Watkins

Probate Cases Reviewed:

1. PB1989-070016
2. PB2013-071060
3. PB2014-071019
4. PB2015-070041
5. PB2015-070951
6. PB2015-070937
7. PB2015-002195
8. PB2015-070616
9. PB2016-071488
10. PB2016-070766
11. PB2016-050366
12. PB2016-050493
13. PB2016-050160
14. PB2017-050011

**SUMMARY OF FACTUAL FINDINGS OF INVESTIGATION:**

The above-referenced probate cases do not represent an exhaustive list of all cases for which Jeannean and Nicole serve as Court-appointment fiduciaries. Jeannean and Nicole also serve as agents under Powers of Attorney and are named agents in multiple Powers of Attorney documents.

By way of background, Jeannean and Nicole, mother and daughter respectively, co-own and manage WLJ, an Arizona limited liability company. WLJ is not licensed as fiduciary business entity. Jeannean and Nicole have expressed their intent to make application with the Division to have WLJ licensed as a fiduciary business entity but, at the time of this report, the Division has no record of any such application.

Jeannean was licensed as a fiduciary in Arizona on July 9, 2009 and serves as a fiduciary under WLJ. She is also a certified geriatric care manager with approximately 18 years of experience. Prior to licensure as a fiduciary, Jeannean operated WLJ as a geriatric care management business and she continues to manage WLJ primarily as a geriatric care management business. In cases where she provides care management services, Jeannean and WLJ enter into a care services agreement with the care recipient and/or the individual's representative.

In the probate cases referenced in this Investigation Summary, Jeannean served as Court-appointed fiduciary/guardian and, at the same time, she directly provided geriatric care management services to the subject wards.

In addition to support employees, WLJ has employed a Licensed Practical Nurse "(LPN)" who provided nursing services to care recipients contracted, by care agreement with WLJ, for geriatric care management services. The LPN is also utilized to provide nursing services to wards in guardianship cases for whom Jeannean is Court-appointed guardian. Jeannean and Nicole told Division staff that over the last eight (8) months approximately, WLJ has been managing without the services of an LPN but Jeannean and Nicole are actively seeking to hire into the vacant LPN position as soon as possible.

Arizona Corporation Commission ("ACC") records showed that on July 29, 2011, Jeannean filed Articles of Organization registering WLJ as a limited liability company (ACC file number L16972410). Jeannean designated herself as statutory agent. ACC records demonstrated that Articles of Amendment were filed on December 15, 2015, adding Nicole to WLJ as a "20% or more member" per the check boxes provided on ACC's form.

Articles of Amendment were filed with the ACC on August 30, 2017, documenting that Jeannean and Nicole individually held a 33 and 1/3% (thirty-three and one third percent) interest in WLJ and Patricia M. Grenier ("Grenier") was added as a member with a 33 and 1/3% (thirty-three and one third percent) interest in WLJ. Grenier is a licensed fiduciary in Arizona but she is not a subject of the Division's investigation.

Jeannean told Division staff that Nicole joined WLJ in 2010. Nicole was licensed as a fiduciary in Arizona on June 1, 2012. She owns and operates Nicole L. Sabatina, LLC.

ACC records reflected that on July 11, 2013, Nicole filed Articles of Organization registering Nicole L. Sabatina, LLC as a limited liability company in Arizona (ACC file number L18595065). Effective September 9, 2017, the designated statutory agent was Zachary E. Mushkatel of Mushkatel, Robbins & Becker, PLLC ("MRB"), from the previous designated agent, Mathis Becker. The entity is in good standing.

Nicole told Division staff that she no longer uses her LLC for her fiduciary work and instead serves as a licensed fiduciary under the WLJ business along with her business partner and mother, Jeannean.

In addition to fiduciary service and obligations with WLJ, since 2012 to present, Nicole stated that she has worked as a licensed fiduciary for MRB, on a contract basis. She said she works at the firm from Monday through Friday, 8:00AM to 12:00PM. Nicole describes her role and function as a "resource" for all the attorneys at the firm. At attorneys' requests, if called upon for assistance, Nicole said she helps MRB clients inquiring about or seeking to be fiduciaries and who may be having trouble understanding the fiduciary role. Nicole said she assists "lay fiduciaries" by explaining and "completing" the role of a fiduciary, explains the "guidelines" and assists MRB clients "through the process."

Nicole's characterization of her role and function as a licensed fiduciary working for MRB indicates that she is paid to meet with MRB clients or potential clients and assist them according to Nicole's description of the tasks she performs. Therefore, MRB and Nicole are representing that Nicole is a knowledgeable person in the fiduciary industry.

Jeannean said that once her and Nicole decided to join under the company name, WLJ, Jeannean serves strictly as the guardian because of her experience and expertise and Nicole serves as the conservator, trustee or personal representative because of her background and expertise in financial matters. The fiduciaries both indicated that they do not infringe onto each other's areas of responsibility and although they function together, they operate separately in their respective roles.

The Division's records review noted that Jeannean serves as guardian and Nicole as conservator, consistent with the above-statements made by the fiduciaries, except the following:

- PB1989-070016 - Jeannean served as guardian and another fiduciary was appointed conservator;
- PB2013-071060 - Jeannean served as guardian and conservator;
- PB2015-070041 - Nicole served as guardian and conservator.

Licensed fiduciaries exercise discretionary control and authority over incapacitated individuals who are unable to make informed decisions and over vulnerable individuals who are unable to protect themselves from abuse, neglect or exploitation by others due to impairment and/or incapacitation. Being in positions of trust and confidence, fiduciaries are mandated to exhibit the highest degree of trust, loyalty, and fidelity in relation to the ward, protected person, or estate; exercise extreme care and diligence when making

decisions on behalf of a ward, protected person, or estate; avoid self-dealing, the appearance of self-dealing, conflict of interest impropriety, or the appearance of a conflict of interest impropriety; competently and prudently manage the property and income of the ward, protected person, or estate; ensure that all fees and expenses incurred for the ward, protected person, or estate, including compensation for the services of the fiduciary, are reasonable in amount, necessarily incurred for the welfare of the ward, protected person, or estate and that those fees are in compliance with Fee Guidelines.

Fiduciaries are compelled to avoid self-dealing, conflict of interest impropriety, or the appearance of a conflict of interest or impropriety. Self-dealing, a conflict of interest, or impropriety arises where the fiduciary has some personal or agency interest other individuals may perceive as self-serving or adverse to the position or best interest of the ward, protected person, or decedent. A conflict of interest may arise if the fiduciary has dual or multiple relationships with a ward that conflict. In addition, fiduciaries are prohibited, by the ACJA, from providing non-fiduciary services to the ward or protected person if the fiduciary has a personal or financial interest.

The Division's investigation determined that Jeannean and Nicole breached their fiduciary duties of care and loyalty in the discharge of their professional responsibilities due to:

- Conflict of interest impropriety;
- The appearance of conflict of interest and impropriety;
- Self-dealing;
- The appearance of self-dealing

Evidence of conflict of interest impropriety and/or the appearance of conflict of interest impropriety, self-dealing and/or the appearance of self-dealing includes Jeannean's and Nicole's business and financial interests in WLJ and using WLJ to provide non-fiduciary services to wards and protected persons (geriatric care management and nursing services).

In addition, as stated earlier in this Investigation Summary, a conflict of interest and/or the appearance of conflict of interest exists in those cases in which Jeannean and/or Nicole retained MRB to act as counsel for the guardianship and/or conservatorship because Nicole has a contract employment arrangement with MRB.

Nicole's contract employment with MRB to provide fiduciary services to the firm and Nicole and Jeannean retaining MRB, as counsel, to represent them in guardianship/conservatorship cases is another example of a conflict of interest and/or the appearance of a conflict of interest.

As presented herein, Jeannean billed for directly providing geriatric care management services to wards while, at the same time, she was the Court-appointed guardian for those wards. Nicole, as conservator, approved the billings for geriatric care management services. Jeannean utilized WLJ's LPN to provide nursing services to wards when the LPN's services were not necessary and/or were redundant because wards were living in

licensed care facilities including assisted living and/or memory care units with existing nursing oversight and care. Nicole approved billing for the nursing services.

The Division notes that WLJ paid its LPN \$24.00 per hour but WLJ billed wards and protected persons \$105.00 - \$115.00 for the nursing services provided. The range in hourly rate was due to WLJ raising the hourly rates.

Notwithstanding the Court's repeated concerns regarding the fiduciaries' billing practices and issues regarding compliance with the Fee Guidelines, Jeannean and Nicole proceeded to operate in the same custom. By discounting the Court's concerns and ignoring procedural safeguards, the fiduciaries practiced in a manner inconsistent with safe, acceptable and prevailing standards of fiduciary practice, required by ACJA §7-201(H)(6)(k)(6), (7) and (8).

In addition to self-dealing and/or the appearance of self-dealing, conflict of interest impropriety and/or the appearance of conflict of interest impropriety, evidence of alleged misconduct is presented herein including the fiduciary filing misleading or false Estate budgets with the Court; exceeding judicially approved budgets and expenditures and failing to timely file amended budgets and seek judicial approval to exceed approved expenditures; non-compliance with the Fee Guidelines, and restricting or denying contact with family members of incapacitated and/or vulnerable persons.

*Guardian provision of non-fiduciary Services / Self-dealing*

Jeannean told Division staff that she has been a certified geriatric care manager for approximately eighteen (18) years. Available records showed that from March 2008 to August 2011, Jeannean was principal and geriatric care manager for Heartfelt Care, LLC. In that capacity, Jeannean's tasks included, but were not limited to, providing objective advice on an individual's cognitive or physical impairment, suggested plan of care, and placement; conducting assessments and performing on-going care management of client; coordinating all aspects of client's condition with family members, medical and support services.

After registering WLJ as an LLC in late July 2011, Jeannean continued to provide the same type of geriatric care management services as she did with Heartfelt Care, LLC. When WLJ is involved with the care management of any individual, WLJ/Jeannean executes a Care Agreement and requests a \$1,000.00 retainer at the time of contracting for "on-going care management services." The Care Agreement details that WLJ agrees to provide quality of life services to care recipients including, but not limited to:

- Cognitive and physical care assessments and recommendations for appropriate plans of care and accompanying services and/or resources;
- Establish, coordinate, and monitor all community-based services;
- Coordinate all medical, dental, vision, and related appointments and transport;
- Monitor the care recipient's physical and emotional well-being;

- Communicate status and any concerns to the responsible party and/or care recipients;
- Implement actions to resolve any concerns and communicate results;
- Provide emotional support to family members, loved ones, and other responsible parties;
- Serve as legal representative i.e. medical power of attorney, temporary or permanent guardian; will work in close coordination with legal representation to comply with court reporting and documentation requirements.

The Division reviewed billing for services rendered in two cases in which WLJ provided geriatric care management services using a Care Agreement. Both cases were referenced earlier in this Investigation Summary.

In the case involving Arnold, care management services were under WLJ's Care Agreement and did not involve Jeannean serving as a fiduciary.

In PB2015-070041, Jeannean and her staff provided geriatric care management initially and continued to provide those services while Nicole first became conservator then guardian for the subject individual, Anna.

Billing in the above-referenced cases reflected very active and direct involvement by WLJ and staff and included frequent visits to the care recipient at home and/or at a care facility in addition to providing a variety of support services, generally in accordance with the services outlined in WLJ's Care Agreement.

In the case involving Arnold, the Care Agreement identified him as the care recipient although Jeannean and her staff also provided geriatric care management services for his wife, Verna. Jeannean was named as agent under a Health Care Power of Attorney for Verna from May 14, 2012 to August 16, 2012 after which Jeannean executed her resignation as agent under the POA. Jeannean and her LPN billed at \$105.00 hourly for services rendered. Monthly invoices varied from \$2,000.00 to \$6,955.50.

In PB2015-070041, WLJ contracted with the care recipient, Anna, on November 20, 2014 to provide geriatric care management services, consistent with the description of services of WLJ's Care Agreement. On March 23, 2015, Nicole was appointed conservator for Anna, per Letters issued, and on October 12, 2015, Nicole was appointed guardian, per Letters issued. While Nicole was the Court-appointed fiduciary, Jeannean and WLJ continued to provide geriatric care management services.

In her interview with the Division, Nicole acknowledged that she hired Jeannean to provide care manager services and that the scope of her involvement was "clearly defined in the letter of agreement...essentially just to provide the care management needs should they arise." Asked about limits to the service involvement, Nicole said "absolutely, we met extensively" with the ward's daughter and said the daughter defined the scope of what Jeannean would assist with.



A review of WLJ's billing from December 16, 2014 through July 28, 2016, showed active involvement from Jeannean and WLJ staff providing non-fiduciary services including frequent visits to see Anna, telephone calls, and a variety of other tasks. Monthly invoices for Jeannean's care services varied from \$793.02 to \$6,298.04. The Division notes that billing started on December 16, 2014 and was identified as professional services "in reference" to the guardianship/conservatorship although Nicole was not formally appointed as conservator until March 2015 and not appointed as guardian in October 2015.

WLJ's geriatric care management services are, by function and purpose, non-fiduciary services. The sort of tasks and services performed by Jeannean and her staff are established in WLJ's Care Agreements, WLJ's business website ([www.withlovejeannean.com](http://www.withlovejeannean.com)), and through the tasks and responsibilities undertaken by Jeannean and her staff, evidenced by billing records.

The Division reviewed the fiduciaries' billing records in the probate cases identified earlier in this Investigation Summary. Division staff could not find any discernable difference between the tasks, responsibilities, and general level of involvement that Jeannean and her staff billed when providing non-fiduciary services from those tasks, responsibilities and general level of involvement for services that Jeannean provided when she was Court-appointed fiduciary. Therefore, Jeannean performed the same non-fiduciary services while, at the same time, she was the Court-appointed guardian although the Division notes that in PB2013-071060 Jeannean was appointed both guardian and conservator.

In her interview, Jeannean told Division staff that she serves in dual roles of guardian and geriatric care manager for all wards. She said there was only one ward, PB2015-002195, who lived at home with around the clock caregivers, but that all other wards were living in licensed care facilities including assisted living, group homes and memory care units. Regarding her dual role as guardian and geriatric care manager, Jeannean said, "If I'm reading the statute correctly, the role of the guardian is to provide care and treatment" and said that visits to wards were done quarterly unless it was necessary that visits occur more frequently. Jeannean said that in 18 (eighteen) years she has been a certified geriatric care manager she has approached every licensed care facility she knows to discuss the importance of having a geriatric care manager on staff but said that none of the facilities have hired geriatric care managers.

Regarding licensed facilities with existing in-house nursing oversight, case managers, or social workers, Jeannean said, "I always consider those services but, in my experience, because they have a license and they are a nurse, it doesn't mean, a lot of times my view is many of these facilities are overpopulated and understaffed. They have a tunnel vision. They don't always see things that I see when I'm coming in because it is, a lot of times, routine to them. I can walk in and see something that three other caregivers have never seen that day, why is that?" She proceeded to say that because facility staff are busy "they don't always see a need...I see things that is maybe out of the ordinary for one of mine. If I bring it to their attention then the medical piece kicks in and nurses react, they call the doctor." Jeannean said that regardless of nursing staff or physician involvement "there are orders that are being changed that no one is aware of. The guardian, with me it's difficult

to explain because I am the guardian. I am the care manager. I am not notified if medications are changed, if someone has had a fall and fractured a rib, which is why I make my visits and I stay involved in their care.”

Jeannean described her role as geriatric care manager as the person who “coordinates all of the care between the physicians and any outside agency that’s coming in. When clients under care management, some of the protected persons have three and four different physicians: cardiologist, urologists, neurologist, never do these physicians get the pieces tied together for them. They are provided with every office visit note from the primary care, every lab result, every physician that is treating this protected person is kept in the loops of what is happening with this person and that is, at times, labor intensive because should this protected person be in the hospital in today’s medical world, most particularly, if they are hospitalized for any reason and I can assure you I keep my people out of there when at all possible, they can see their physician as a follow up and the first question we are asked is why am I seeing you today? They have no recall that this person has been in the hospital, they have no idea what medications have been changed, we tie all of those pieces together, we take the records in hand or send them via correspondence to the physicians that are even treating them in-house, that is the major part of what we do.”

Jeannean said care management “is provided to them through me...care management, guardianship, the roles are connected if I am the guardian...I charge no more to be the guardian than I do as the care manager, it is one fee for both positions.” She stated that most of her visits to wards were done as part of her “care management piece” and said the “guardian piece” is when she is called to care conferences, problems with behaviors, admissions or addressing alternative placements for wards who cannot remain in the current placements. She said, “those are separated but when I am following up on their care I am doing that as their geriatric care manager.”

Regarding visiting wards as the guardian or as the geriatric care manager, Jeannean said, “I cannot separate the two. This is all for the quality of life and the protection and care of the protected person. It’s very hard for me to separate the piece. When I am doing something medically, following up, I usually, now in the last eight (8) months, I separate those out in the billing as care management services. I’ve done that specifically to avoid a lot of the questions as to why I am there. It is the care management role that takes me there most of the time.”

With respect to any limits to her involvement as geriatric care manager to wards, Jeannean said, “I’d have to say there are no limits because it is needs driven” and conceded that she, as guardian, determines the ward’s needs. She added that she does not involve herself “in care that does not need to be provided or oversight that does not need to be given.”

Jeannean said she charges the same hourly rate as guardian and geriatric care manager. She stated that she could not differentiate between the two roles from looking at any of her billing entries. She described having a perspective or an approach as being “proactive and not reactive” and said that most of her fees were generated from providing geriatric care management services to wards and that her fees as guardian were minimal.

In a hearing on October 16, 2017, involving PB2015-070951, while addressing the Court Jeannean stated, pertinently:

“...one thing that I’ve tried to do to clarify for the Courts what my role is when I’m seeing my clients or my wards is that when I am there strictly as a geriatric care manager I am noting as such. As the guardian, that is noted for strictly what the guardian’s duties would be but there is a daily head to toe need to be available for the care management side whether it’s by telephone, medical emergencies, those types of things. I try to provide the 24/7 availability to my clients as I would if it were a family member because I know that’s what the ward, their family, and the Court is expecting of me whether I’m a guardian or care manager. Most of my duties are directly related to care management and I try to keep it...I started to keep it very specific for the Court.”

Jeannean went on to say, “My fee for care management is, as a fiduciary there is no difference in those fees but I have delegated numerous times to my CNA or if the nurse is available and sometimes she not always is, for them to do those tasks.”

#### *Licensed Practical Nurse*

As part of the continuum of geriatric care management services, Jeannean utilizes WLJ’s LPN with wards. The LPN provides nursing services to wards living in licensed care facilities even when those facilities having existing LPNs, Registered Nurses (“RN”) and/or other medical staff.

As stated earlier in this Investigation Summary, WLJ paid its LPN \$24.00 per hour and charged wards the hourly rate of \$105.00 - \$115.00 for the nurse’s services. Hourly rates charged \$105.00 - \$115.00 due to rate increases.

The Division further notes that WLJ’s LPN hourly rate billed to wards and protected persons equaled the hourly fiduciary rate (\$105.00-\$115.00) WLJ charged wards and protected persons and equaled the hourly rate WLJ charged for geriatric care management services (\$105.00-\$115.00).

Asked to explain her LPN’s role when licensed facilities have on-staff nursing care and oversight of the residents/patients, Jeannean said that her nurse reviews the ward’s medical charts on a quarterly basis and reports to her. She acknowledged that she could directly obtain medical and chart information and speak with facility nurses when Jeannean conducted her fiduciary visits but said that her LPN provides more in-depth detail on “incidents, incident reports, like falls...there’s not always notice given.” She said because her LPN sees wards weekly, she provides “information to me, details on day to day activities of daily living, incidents, vitals, things that I don’t obtain because I’m not there all the time.” Asked what information her LPN could obtain from the facility’s RNs and LPNs that Jeannean could not, she said, “I guess what I’m telling you is they don’t always provide it to us...I employ a nurse to keep me apprised of the status of my protected

persons.” She said her LPN also transports and accompanies wards to various medical appointments.

Jeannean added that WLJ’s LPN is used to “gather information presented to me in a manner to which I can make a good decision for taking care of my client, or my ward, or my protected person. She bills at a lower rate, it is more cost-effective, and it is more, much more appropriate for the protected person, ward, or client, to have that nurse communicating the medical pieces to me because it provides me the opportunity to make better decisions.” Asked to explain how additional nursing services provided by WLJ’s LPN would be more cost-effective given that facilities employ nursing staff, Jeannean said it was cost-effective to wards for her LPN to be involved than it would be for Jeannean to be involved because the LPN bills out at a lower hourly rate than does the fiduciary. Jeannean said her LPN is ‘salaried’ but is paid at approximately \$24.00 per hour.

#### *Licensed Practice Nurse: Billing*

The following are several examples in which WLJ’s LPN was utilized in probate cases. These examples are not representative of all probate cases reviewed but serve to demonstrate how the guardian used her LPN staff in terms of hours billed to wards and protected persons and the hourly rate that WLJ charged to wards and protected persons for those nursing services. The Division notes that WLJ appears to have had a change in nursing personnel providing those services in 2016 (SQ, SR and KJ provided nursing services, per billing records).

##### 1) PB2013-071060

- Fiduciary billed from November 15, 2013 through September 30, 2014.
- LPN total hours billed: 29.9
- Hourly rate: \$105.00

##### 2) PB2014-071019

- Fiduciary billed from March 22, 2016 through June 30, 2016. The ward died on June 30, 2016.
- LPN total hours billed: 30.7
- Hourly rate: \$105.00

##### 3) PB2015-070041

- Fiduciary billed beginning November 20, 2014 through December 31, 2015.
- LPN total hours billed: 20.6
- Hourly rate: \$105.00

##### 4) PB2015-002195

- Fiduciary billed from April 3, 2015 through May 31, 2016.

- LPN total hours billed: 51.7
- Hourly rate: \$105.00
- LPN total hours billed: 5.3
- Hourly rate: \$55.00 (for non-nursing tasks)

In this case, the ward resided at home with existing 24-hour care-givers and nursing oversight.

5) PB2015-070951

- Fiduciary billed from August 5, 2015 through August 26, 2016.
- LPN total hours billed: 21.0
- Hourly rate: \$105.00
- LPN hours billed 0.6
- Hourly rate: \$115.00

In this matter, Jeannean and Nicole later amended the accounting to reflect a credit to the protected person. Adjustments may have been made to the LPN's billing and other WLJ staff billing.

6) PB2016-050160

- Fiduciary billing from April 22, 2016 through March 30, 2017
- LPN total hours billed: 25.9 - April 22, 2016 through June 15, 2016
- Hourly rate: \$105.00
- LPN total hours billed: 31.0 - July 7, 2016 through December 5, 2016
- Hourly rate: \$115.00
- LPN total hours billed: 10.9 - December 12, 2016 through March 30, 2017
- Hourly rate: \$115.00

*Conservator - Provision of non-fiduciary services by Guardian / Self-dealing*

Regarding Jeannean and WLJ providing geriatric care management services to wards, Nicole said, "I do not get involved in that" stating that she defers to Jeannean's judgement, considerable experience as a geriatric care manager, and her authority as the Court-appointed guardian in making those decisions. Nicole said she views care management services as being separate from Jeannean's services as the guardian adding, "normally the day to day care management of an individual is, that is a certified care manager's role to make sure that they have, that their needs are being met...that's not the guardian's role but the guardian mainly, you know the court allows one visit a month. Well, one visit a month doesn't ensure, in the interim, that all of those needs are being met..."

Questioned how, as conservator, she distinguishes between the care management billings from those specific to the guardian's billings, Nicole said that both services are billed at similar hourly rates and that "Jeannean makes that distinction on the bills as of eight months ago, we split everything out." When asked if she could differentiate the guardian's tasks

from the geriatric care manager's tasks by looking at Jeannean's billing, Nicole said "I would not." Nicole said she discusses, with Jeannean, the costs of Jeannean providing geriatric care management services prior to her serving in that role. Nicole said she discusses the protected person's assets and resources and that those factors determine "what level of care, who we use, how we implement those services and where they're placed...all of that is determined based on conversations that Jeannean and I have to provide the least restrictive environment at the least amount of cost or cost benefit to the person...obviously we always look at costs for the ward."

Regarding the conservator's review of the guardian's billings charged to the protected person, Nicole told Division staff that she does not review Jeannean's billing for "substantive information" and instead Nicole looks for accuracy, clerical or typographical errors, block billing, duplicate charges, and that rates commensurate with tasks. Nicole said she looks to see "if we have stayed within the thresholds that we're required to under the statewide fee guidelines." When Nicole finds inaccuracies, errors, block billing or any issue related to rates not being proportionate to tasks, she said she immediately makes the necessary corrections and "we automatically no charge it." Nicole said those are corrected before the annual accounting is submitted. Nicole remarked that she does not question Jeannean regarding the scope of work, extent and level of involvement as care manager for wards. Nicole said she assumes that Jeannean's billings are "proper" because she does the "background work to tell me that it's okay to pay."

Nicole and Jeannean both told Division staff that they reviewed their fiduciary fees and other fees billed monthly but that effective eight (8) months ago, approximately, they began reviewing and auditing the billings twice monthly. Nicole said they are doing a "much more strict auditing process" and are now "implementing auditing controls and precautionary processes to our billing." Nicole acknowledged that although they now review the billings twice monthly, she has not changed her approach in terms of what she is reviewing for and said she continues to monitor for errors, block billing etc. but not for "substantive information," as previously noted. Regarding payment of invoices, Nicole said she reviews those daily as they come in to her office and she determines who and what gets paid weekly.

Regarding Jeannean, as guardian, providing geriatric care management services for wards living in licensed care facilities that have existing case managers, or nursing staff, Nicole said none of the facilities WLJ selects have in-house geriatric care managers something she knows due to her years of experience and understanding of the infrastructure of the facilities. Nicole conceded that much of that information comes from Jeannean and her experience.

#### *Conservator – Licensed Practical Nurse*

Nicole told Division staff that Jeannean, as guardian, decides whether to utilize WLJ's LPN. As conservator, Nicole said she does not question the guardian's decisions regarding the appropriateness and need for nursing services nor does Nicole question the guardian about the scope, level and extent of the nurse's involvement in probate cases. Nicole said

she reviews the LPN's billings and when asked what she looks for in the nurse's billings, Nicole stated that she reviews for clerical errors, block billing, duplicative charges and the same information she reviews in the guardian's billings.

Regarding wards living in licensed care facilities with in-house LPNs and RN care and oversight, Nicole said WLJ's LPN is brought into situations where "medical professionals are not forthcoming with information related to the well-being of our person." She said that "in a lot of cases" the medical professionals who work in respective facilities do not "communicate all aspects of our persons' care." Nicole cited an example whereby one week ago someone in a licensed facility fell but the fiduciaries were not informed of the incident. She said WLJ's LPN assessed the ward and discovered that the individual had a broken rib. Nicole said there are times when information has not been forthcoming from these medical professionals "so for us to rely on those professionals 100% of the time is not a benefit to our client if their needs are not being met in certain situations." Nicole acknowledged that what she described was an exception but said that "we are also required to keep medical documentation on all our people...in our guardianship cases when we had a nurse on staff they would do assessments for our files." Nicole said the LPN reviews facility notes, completes care plans, takes wards to medical appointments and that, often, medical professionals "will reach out directly to our nurse to provide updates and so it's a seamless transition of information to better protect the person."

Asked to clarify if the LPN was involved only when the guardian believed that licensed facility medical professionals were not "forthcoming," Nicole said that their LPN is involved "in all our cases" to ensure that the fiduciaries have "an accurate record." She said "our LPN is utilized to oversee the medical piece for our clients even though they are placed in facilities that have their own medical personnel. It is our duty, Jeannean's duty more importantly as the guardian, to ensure that their medical needs are being met. It just takes one situation to create a sense of insecurity almost with us for all of our clients so we always error on the side of involving our medical staff to oversee and the duties are structured based on where they are so obviously if they have medication management at the facility, we don't do that." Division staff asked about their LPN's role in licensed facilities when the nursing staff takes vital signs and blood pressure readings, and otherwise provides daily care to the ward, Nicole said, "our nurse still does the vitals and still goes to the care plans and reports directly to the guardian regarding their medical needs." Nicole said that while WLJ is without an LPN they have a certified medical assistant "that handles the vitals and Jeannean works closely with the group homes and medical professionals."

Given Nicole's statements regarding medical professionals not being forthcoming with information and/or not reporting incidents to the fiduciaries, she was asked if the fiduciaries lacked trust or confidence in the facilities selected for wards. She said, "no, that's not what I said...we wouldn't place people in facilities if we didn't trust the care" but said the fiduciaries wanted an extra layer of oversight. When asked if that extra level of intervention was for the fiduciaries' comfort level, Nicole said, "for the better protection of the person, yes" and that it is Jeannean, as guardian, who determines what "better protection" is regarding wards.

Asked how WLJ's LPN is involved in situations where a ward lives at home and has home caregivers and nursing oversight, Nicole said "normally we wouldn't, if they are provided for with medical professionals in their home, we work closely with those medical professionals but Jeannean's involvement is scaled back and our nurse is scaled back because they have care in the home, as long as they are able to afford that." Nicole was asked to clarify the differences in WLJ's approach regarding scaling back nursing and geriatric care management services for wards living at home with nursing care and oversight but increasing the LPN's involvement for wards living in licensed care facilities, that have staff nurses and oversight. Nicole said, "each situation is different when there's a licensed agency in place, a lot of time we don't get to select that licensed agency. We may have never worked with them before and so when the situation warrants or justifies our involvement medically we provide that service to protect the person."

Nicole verified that WLJ pays the LPN an hourly rate of \$24.00. She said she knew that licensed care facilities do not charge protected persons extra to provide in-house nursing or medical oversight but sometimes in assisted living arrangements there may be an upcharge for medication management. She said groups homes have a flat rate and skilled nursing facilities do not charge. Although Mushkatel interjected that decisions regarding the use of the LPN was made by Jeannean and that Nicole stated she does not question those, Division staff acknowledged that Nicole is responsible for approving costs incurred by the guardian to which Nicole replied, "...I do always look at the cost benefit to the person and so if our involvement is not cost effective for the individual then yes I do address these things with Jeannean."

#### *Employment with MRB*

As previously noted in this Investigation Summary, in addition to serving as a Court-appointed fiduciary/conservator Nicole said she has worked as a "licensed fiduciary" with MRB, on a contract basis, since 2012. She works with the firm five days per week, Monday through Friday, from 8:00AM to 12:00PM, although she said recently she has not been working there as much because she is busy with her fiduciary work under WLJ. Nicole characterizes her function at MRB as a "resource" for all attorneys at the firm and, if called upon by any attorney, said she assists MRB clients who are inquiring about or seeking to be appointed fiduciaries and are having difficulty understanding the role of a fiduciary and Nicole explains the role of fiduciary and guiding "lay fiduciaries...through the process." Nicole denies doing any work at MRB for any cases in which she is appointed as fiduciary.

Nicole's characterization of her role and function as a licensed fiduciary working for MRB indicates that she is paid to meet with MRB clients or potential clients and assist them according to Nicole's description of the tasks she performs. Therefore, MRB and Nicole are representing that Nicole is a knowledgeable person in the fiduciary industry.

Nicole stated that MRB has a list of four fiduciary businesses that attorneys give to clients who are seeking licensed fiduciaries. Nicole said MRB clients select from this list, interview those fiduciaries and choose accordingly. Nicole denies being privy to any communication regarding the described list and said she has not seen the list but knows of



its existence. In no specific order, Nicole said that the said list is comprised of the following fiduciaries: WLJ, Childress & Coventry, Condit & Associates, and Maureen Edwards.

In addition to her fiduciary work with MRB, Nicole has retained MRB to “represent me in separate matters.” Court records showed that MRB has been legal counsel for Nicole, as conservator, in the following probate matters:

- PB2015-002195
- PB2015-070041
- PB2016-071488
- PB2017-050011
- PB2014-071019

MRB was counsel for a ward’s daughter in a matter which involved Nicole as conservator:

- PB2015-070951

MRB has been counsel for Jeannean when she was guardian and conservator:

- PB2013-071060

When Nicole retains MRB as counsel to represent her and WLJ in cases for which Nicole is the Court-appointed conservator, and Jeannean is Court-appointed guardian, Nicole, as conservator, is tasked with the responsibility of approving the legal fees and costs incurred by MRB. Therefore, Nicole must oversee and approve her employer’s billings and those tasks and actions undertaken. This places Nicole in a conflicting dual role because she must approve the fees and costs incurred by MRB when she employed by and paid to provide fiduciary services to MRB and its clients or potential clients.

The Division notes the following two (2) examples whereby Nicole, as conservator, approved MRB’s fees and costs but the Court took issue with what the Court deemed to be secretarial or clerical related fees:

1) PB2015-070041

The Honorable Frank Moskowitz’s April 3, 2017 Order Approving First Annual Account, Approving Attorney’s Fees and Expenses and Approving Fiduciary’s Fees and Expenses, pertinently [emphasis added]:

- C. *Approving the attorneys’ fees in the total of \$10,863.46 [from original billing of \$10, 938.45] billed by Mushkatel, Robbins & Becker, during the Current Accounting Period in connection with this matter. In fairness to all counsel, the Court did not approve the secretarial or clerical billings for 4/13/15 (“mailing to parties...”), 7/23/15 (“Process copy...”), and 8/31/15 (“Process copies...”).*

In this matter the Court reduced \$75.00 of clerical related billing.

2) PB2015-002195

The Honorable Frank Moskowitz's November 20, 2017 Order Approving First Annual Account, Approving Attorney's Fees and Expenses and Approving Fiduciary's Fees and Expenses, pertinently [emphasis added]:

*D. Approving the attorneys' fees and expenses in the amount of \$13,436.57 [from original billing of \$14,066.57] paid to Mushkatel, Robbins & Becker, PLLC during the Current Accounting Period in connection with this matter.*

In this matter, the Court reduced \$630.00 of clerical related billing.

Although the above-referenced fees and expenses reduced or disapproved by the Court were not substantial, the Division notes that Nicole approved those fees and expenses incurred by MRB.

The two (2) cases referenced above are not intended to represent an exhaustive list of those cases for which the Court may have reduced attorney's fees and costs.

*Filing Misleading or False Estate Budgets with the Court*

Conservators are required to prepare and file initial and, subsequent, estate budgets and sustainability reports containing all projected costs for the forthcoming year. After the Court has approved expenditures, fiduciaries are obligated to file amended budgets with the Court if spending exceeds \$2,000.00 (two thousand dollars) or 10% (ten percent) in any line of the budget once the fiduciary "reasonably" knows that spending will exceed the threshold.

For this investigation, the Division primarily reviewed the fiduciaries' filing of the initial Estate budgets which included spending projections for the first year of involvement and first accounting year.

Nicole told Division staff that she knows she must file initial estate budgets within 90 (ninety) days of being appointed by the Court, per issuance of Letters. Explaining the process that the fiduciaries undertake when preparing initial budgets and how they arrive at the spending projections for the given year, Nicole said, "we do our very best to forecast their expenditures, some of which is known, some of which is unknown but we do our best to forecast those to provide a sustainability study..." Nicole said she and her support staff prepare the initial estate budgets and Jeannean is involved in the process "because she's going to provide me with the costs associated for their care and whether or not those costs are going to be constant throughout the first accounting period or if she [Jeannean] sees maybe a reduction in some of the costs, she will give me if there are any extraordinary medical treatments that need to happen in the first accounting." In that case, Nicole said Jeannean obtains an estimate of those extraordinary costs so that those could be included

in the budget. Nicole said, “we do our best to gather all the information we possibly can to get that initial budget as accurate as we can, and, in some cases, it doesn’t always work out, but we do our best using the information we are aware of at the time.”

Nicole stated that Jeannean does not provide a written estimate or proposal of the guardian’s projected expenditures but said that it is “based on the needs of the person, how much involvement we will have and so we estimate what that will look like from a budget perspective.” Jeannean includes expenditure estimates for food, clothing and shelter, and upcoming medical treatments. Nicole said she considers property and evaluations, assets, and income of that ward or protected person. Nicole said that they include all outstanding costs incurred such as air conditioning or home repairs, legal bills etc. if those costs were incurred prior to the fiduciaries being appointed. Nicole said that budget projections also include the fiduciary fees and costs incurred from the time of their initial involvement before they are appointed guardian and conservator.

In her interview, Jeannean was asked about her estimation of costs and expenditures for the Estate budgets. She said she meets with Nicole to prepare the Estate budget. Jeannean said she includes the ward’s medical and personal needs “barring any unforeseen circumstances...” She said budgets include the guardian’s projected fees and costs including the geriatric care management and nursing fees and costs and those expenses associated with moving or transitioning wards in their placements. Jeannean said she includes the fiduciary and geriatric care management fees incurred prior to her being appointed guardian.

The Division reviewed the following probate cases and looked at the fiduciaries’ initial Estate budget projections of expenditures for the first nine (9) month accounting, specific to what the Estate budgets identify as fiduciary fees and costs only.

The Division notes that these fiduciary fees and costs include the guardian and conservator’s (fiduciary) fees and expenses, geriatric care management fees and costs, nursing fees and expenses and those fees and costs associated with WLJ’s support staff assisting Jeannean and Nicole.

1) PB2015-070951

On or about February 19, 2016, the fiduciaries filed the initial Estate budget and expenditure projections for the period from November 20, 2015 – August 31, 2016. In that budget, the projected fees and costs were noted as \$21,000.00.

Disbursements to the fiduciaries:

▪	December 3, 2015:	Nicole	\$2,419.91
▪	December 3, 2015:	WLJ	\$5,997.71
▪	December 20, 2015:	Nicole	\$3,063.89
▪	December 20, 2015:	WLJ	\$3,523.36
▪	January 28, 2016:	WLJ	\$812.36

▪ January 28, 2016:	Nicole	\$2,032.45
▪ February 22, 2016:	Nicole	\$1,680.50
▪ February 22, 2016:	WLJ	\$846.32
▪ March 3, 2016:	Nicole	\$810.50
▪ March 31, 2016:	WLJ	\$532.35

Total fees/costs at end of accounting: \$30,932.00

By February 22, 2016, the fees and costs paid out or incurred by the estate was \$20,376.53 although the initial budget filed three days prior, on February 19, 2016, projected the nine (9) month fiduciary fees and costs expenditures to be \$21,000.00.

By March 31, 2016, fees and costs disbursed were \$21,719.38.

## 2) PB2015-002195

On or about July 16, 2015, the fiduciaries the conservator initial Estate budget for the period from May 12, 2015 through February 29, 2016. Projected fees and costs were listed as \$20,000.00.

Disbursements to the fiduciaries:

▪ May 27, 2015:	WLJ	\$5,000.00
▪ June 22, 2015:	WLJ	\$5,000.00
▪ August 4, 2015	Nicole	\$10,052.57

Total fees/costs at end of accounting: \$83,912.53

By August 4, 2015, total fiduciary fees and costs disbursed was \$20,052.57. The initial budget filed on July 16, 2015 projected nine months fiduciary fees and costs of \$20,000.00.

## 3) PB2015-070937

On or about December 11, 2015, the fiduciaries filed the initial Estate budget for the period from September 5, 2015 through June 30, 2016. Projected fiduciary fees and costs were \$25,000.00. This matter involved two wards, husband and wife.

Disbursements to the fiduciaries:

▪ October 15, 2015:	WLJ	\$14,336.04
▪ October 20, 2015:	WLJ	\$9,884.03
▪ January 28, 2016:	WLJ	\$10,000.00

Total fees/costs at end of accounting: \$82,249.12

By October 20, 2015 disbursements made to the fiduciaries total \$24,220.07. The initial budget filed on or about December 11, 2015 reflected nine (9) month projections of \$25,000.00 in fiduciary fees and costs.

By January 28, 2016, total disbursements of fees and costs were \$34,220.07.

4) PB2015-070041

On or about May 1, 2015, Nicole filed the initial Estate budget for the period from March 23, 2015 through December 31, 2015, reflecting nine (9) month projects of fiduciary fees and costs of \$7,500.00.

Disbursements to the fiduciaries:

▪ April 1, 2015:	Nicole	\$600.21
▪ April 22, 2015:	Nicole	\$2,479.67
▪ May 20, 2015:	Nicole	\$1,210.60
▪ June 30, 2015:	Nicole	\$1,119.27
▪ August 1, 2015:	Nicole	\$2,445.34
▪ September 14, 2015:	Nicole	\$5,000.00

Total fees/costs at end of accounting: \$21,260.42

By August 1, 2015, total disbursements to Nicole were \$7,855.09 and by September 14, 2015, Nicole received a total of \$12,855.09 from the estate.

5) PB2016-050151

On or about June 21, 2016, the fiduciaries filed the initial Estate budget for the period from March 22, 2016 through December 31, 2016 reflecting nine (9) month projections of fiduciary fees and costs of \$35,000.00. This matter involved two wards, husband and wife.

Disbursements to the fiduciary:

▪ April 22, 2016:	WLJ	\$18,793.48
▪ May 22, 2016:	WLJ	\$5,282.11
▪ June 28, 2016:	WLJ	\$6,679.66
▪ July 23, 2016:	WLJ	\$6,411.53
▪ August 22, 2016:	WLJ	\$5,917.73
▪ September 22, 2016:	WLJ	\$6,257.54

Total fees/costs at end of accounting: \$58,589.46

By July 23, 2016 total disbursements to the fiduciaries was \$37,166.78 although the initial Estate budget filed on or about June 21, 2016 projected nine (9) month fees and costs of \$35,000.00.

By August 22, 2016 total fees and costs paid out were \$43,084.51 and by September 22, 2016, the fiduciaries fees and costs totaled \$49,342.05.

6) PB2016-050160

On or about September 15, 2016, the fiduciaries filed the initial Estate budget for the period from June 28, 2016 through March 31, 2017, projecting fiduciary fees and costs of \$25,000.00.

Disbursements to fiduciaries:

▪ July 11, 2016:	WLJ	\$10,000.00
▪ July 23, 2016:	WLJ	\$5,000.00
▪ August 23, 2016:	WLJ	\$20,093.20
▪ September 30, 2016:	WLJ	\$9,274.64

Total fees/costs at end of accounting: \$70,185.41

**\*\* The Honorable Andrew J. Russell's June 1, 2018, Order Approving First Annual Account, noted that the fees and expenses incurred by the fiduciary totaled \$84,035.41.**

By August 23, 2016, disbursements to the fiduciary was \$35,093.20 despite the initial nine (9) month budget projections of \$25,000.00. By September 30, 2016 disbursements were \$44,340.84.

7) PB2016-070706

On or about May 12, 2016, the fiduciaries filed the initial Estate budget and projections for the period from February 9, 2016 through December 31, 2016, projecting nine (9) month projections of fees and costs of \$40,000.00

Disbursements to fiduciaries:

▪ March 23, 2016:	WLJ	\$19,572.13
▪ April 22, 2016:	WLJ	\$8,710.85
▪ May 22, 2016:	WLJ	\$8,710.85
▪ June 28, 2016:	WLJ	\$7,312.94

Total fees/costs at end of accounting: \$46,080.31

By June 28, 2016, total disbursements of fees and costs totaled \$44,306.08 despite the initial budget projections of \$40,000.00 filed the previous month.

8) PB2016-050366

On or about November 28, 2016, the fiduciaries filed the initial Estate budget and projections for the period from July 15, 2016 through April 30, 2017 reflecting projected fiduciary fees and costs of \$40,000.00.

Disbursements to fiduciaries:

▪ September 30, 2016:	WLJ	\$33,004.71
▪ October 24, 2016:	WLJ	\$3,538.43
▪ November 21, 2016:	WLJ	\$6,098.63
▪ December 21, 2016:	WLJ	\$2,144.78

Total fees/costs at end of accounting: \$56,260.27

By November 21, 2016 total disbursements for fees and costs were \$42,641.77 despite the initial estate budget projections of \$40,000.00 filed on November 28, 2016.

By December 21, 2016 disbursements for fees and costs were \$44,786.55.

9) PB2016-050493

On or about November 8, 2016, the fiduciaries filed the initial Estate budget and projections for the period from March 22, 2016 through December 31, 2016 reflecting projected fees and costs of \$40,000.00. This matter involved two wards, husband and wife.

Disbursements to fiduciaries:

▪ August 25, 2016:	WLJ	\$9,678.38
▪ September 22, 2016:	WLJ	\$8,473.06
▪ October 24, 2016:	WLJ	\$11,225.95
▪ November 21, 2016:	WLJ	\$10,560.67
▪ December 21, 2016:	WLJ	\$5,309.22

Total fees/costs at end of accounting: \$58,691.55

By November 21, 2016, disbursements for fiduciary fees and costs amounted to \$39,938.06 despite the filed estate budget of November 8, 2016 projecting fees and costs of \$40,000.00.

By December 21, 2016, disbursements to WLJ for fees and costs were \$45,247.28.

10) PB2013-071060

On or about March 5, 2014, the fiduciaries filed the initial Estate budget and projections for the period from December 13, 2013 – September 30, 2014, reflecting projected fees and costs of \$12,000.00.

Disbursements to fiduciaries:

▪ January 13, 2014:	WLJ	\$2,000.00
▪ January 23, 2014:	WLJ	\$4,685.86
▪ February 18, 2014:	WLJ	\$1,485.55
▪ March 18, 2014:	WLJ	\$1,965.51
▪ April 14, 2014:	WLJ	\$3,073.99
▪ May 20, 2014:	WLJ	\$2,501.83
▪ June 19, 2014:	WLJ	\$1,459.39
▪ July 21, 2014:	WLJ	\$1,019.33
▪ August 22, 2014:	WLJ	\$1,512.97
▪ September 18, 2014:	WLJ	\$992.61

Total fees/costs at end of accounting: \$20,697.04

By February 18, 2014, approximately two weeks prior to filing the initial budget, the disbursements for fees and costs were \$8,171.41 and by March 18, 2014, two weeks after filing the initial estate budget, disbursements for fees and costs totaled \$10,136.92. The fiduciaries exceeded the projections on fees and costs by April 14, 2014, when disbursements for fees and expenses were \$13,210.00

The above-referenced disbursements in each case are not an exhaustive account of all disbursements made throughout the accounting year. These identified above are noted to provide a timeline for when the fiduciaries filed initial Estate budget and sustainability reports with the Court, the projections of the fiduciary fees and costs included in the budgets, and when the fiduciaries arrived at their projections and/or the point where expenditures for fees and expenses exceeded their projections.

The records detailed above demonstrate that the projections in the Estate budget filed with the Court were not simply attributed to error because a pattern was observed across the probate cases reviewed. Therefore, the fiduciaries would have and should have known that the projections they submitted to the Court were wrong, misleading or, at worst, falsely represented.

*Exceeding judicially approved Estate budgets /  
Failing to timely file amended budgets*

In addition to the obligation to file accurate initial Estate budgets which are to include all projected costs for the year, a licensed fiduciary is required to file amended budgets with the Court if spending exceeds \$2,000.00 (two thousand dollars) or 10% (ten percent) in any line of the budget once the fiduciary reasonably knows that the spending threshold and variance has or will occur.

Nicole told Division staff that after the Court approves the initial Estate budgets, she and Jeannean strive to remain within their spending projections. Nicole stated, "we always try to remain within those budget amounts and there are circumstances that prevent that from happening and that is due to unknown assets at the time that we've completed it, decline in



their medical and unforeseen expenses or assets that we don't know about at that time." She added that budgets are amended "because we are not always aware of all of the information in the first 90 days...income we don't know about, expenditures that maybe they were past due on a credit card for six months and we never received any type of statement and they owed \$8,000.00, those types of things. Unknowns, those are what creates the need for amended budgets." Nicole said she and Jeannean monitored their expenditures and professional fees for every case monthly although as of the last eight (8) months, approximately, they stated that they are now reviewing the budgets and fees and expenses every two weeks.

Nicole was asked what was required if and/or when the fiduciaries required more money than what they projected in the Estate budget and what was approved by the Court. She said, "we get with our attorney and request either a release of funds to provide for future needs of the individual and, of course, we amend the budget to reflect additional needs that they have or the release of funds....what's required of me is to notify within, I believe it's 30 (thirty) days of any change more than 10% (ten percent) of the budget...." She further said, "we monitor each individual category and if any one of those categories goes over by 10% (ten percent) we alert the Court.

Nicole stated that she was complying with the above-stated thresholds and was timely filing amended budgets. She then clarified that there were three (3) probate cases in which she said she filed the amended budget information to counsel but that the attorneys failed to timely file the documents with the Court. Nicole indicated that two (2) of those three (3) cases, involved law firm, MRB, (PB2015-002195, PB2015-070041) and the other case involved counsel, Catherine Leas, but Nicole was unable to recall the case. Nicole said they "monitor expenses and audit their budgets and if they ever go over because of care needs then amend and file with the Court...we monitor each individual category and if any one of those categories goes over by 10% we alert the Court."

The Division reviewed records involving PB2015-002195, cited by Nicole in her interview. As previously detailed in the preceding section, *Filing Misleading or False Estate Budgets with the Court*, the fiduciaries filed the initial Estate budget on July 16, 2015 projecting \$20,000.00 in fiduciary fees and costs. By August 4, 2015, total fiduciary fees and costs already disbursed or incurred was \$20,052.57. The fiduciaries filed a petition for approval of first annual account and approval of fiduciary fees on August 10, 2016 at the end of the accounting year (May 12, 2015 through February 29, 2016). Court records showed that the first time the fiduciary, by and through counsel, filed an amended budget was January 19, 2017.

In PB2015-070041, referenced by Nicole, the initial Estate budget was filed on May 1, 2015 projecting fiduciary fees and costs of \$7,500.00. By August 1, 2015, total disbursements to Nicole was \$7,855.09 and by September 14, 2015, she received a total of \$12,855.09 from the protected person. The fiduciary filed a petition for approval of first annual account and for approval of fiduciary's fees on March 14, 2016. There was no Court record of the fiduciary filing an amended budget.

In the above-referenced case, on January 5, 2017 the fiduciary filed a Stipulation Petition for Substitution of Guardian nominating the ward's daughter and son-in-law to be appointed co-guardians of the ward.

The following demonstrates the projected fiduciary fees and costs (including geriatric care management fees and costs, nursing fees and costs, and support staff fees and costs), as submitted to the Court by the fiduciaries, verses actual fees and costs filed by the fiduciaries at the end of the respective accounting years:

1) PB2015-070951

Projected fees and costs:	\$21,000.00
Actual fees and costs:	\$30,932.00

2) PB2015-002195

Projected fees and costs:	\$20,000.00
Actual fees and costs:	\$83,912.53

3) PB2015-070937

Projected fees and costs:	\$25,000.00
Actual fees and costs:	\$82,249.12

4) PB2015-070041

Projected fees and costs:	\$7,500.00
Actual fees and costs:	\$21,260.42

5) PB2016-050151

Projected fees and costs:	\$35,000.00
Actual fees and costs:	\$58,589.46

6) PB2016-050160

Projected fees and costs:	\$25,000.00
Actual fees and costs:	\$70,185.41

**\*\* The Honorable Andrew J. Russell's June 1, 2018, Order Approving First Annual Account, noted that the fees and expenses incurred by the fiduciary totaled \$84,035.41.**

7) PB2016-070706

Projected fees and costs:	\$40,000.00
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Actual fees and costs: \$46,080.31

8) PB2016-050366

Projected fees and costs: \$40,000.00

Actual fees and costs: \$56,260.27

9) PB2016-050493

Projected fees and costs: \$40,000.00

Actual fees and costs: \$58,691.55

10) PB2013-071060

Projected fees and costs: \$12,000.00

Actual fees and costs: \$20,697.04

The Court Accountant's issue the Court Accountant's Report and Recommendation Initial Review ("CARR"), whenever any concern is noted with the accounting. The following CARRS identified concerns pertinent to budgets exceeding judicially approved expenditures [emphasis added]:

1) PB2013-071060

CARR date April 3, 2015:

*It was also noted that the budget for fiduciary services was \$12,000 and that there was no amendment to that budget as is required when the budget is overrun by more than \$2,000 or 10% of the budget. In this case the budget was overrun by over 70% and almost \$8,700.*

2) PB2015-002195

CARR date November 7, 2016:

*The Court Accountant notes that whenever a budget variance of greater than \$2,000 and 10% of the Court approved budget are anticipated by the Conservator, an amended budget must be filed with this Court (see instructions for the preparation of an Account). The Court Accountant notes that there were line items in this filing that had budget variances of greater than \$2,000 and 10% of the Court approved budget (including fiduciary fees) and yet an amended budget was not filed.*

*Recommendation: In the future, please file an amended budget to this Court as soon as a variance of \$2,000 and 10% of the budget line item is identifies [sic] so that the Court can review these changes before costs are incurred.*

CARR date March 26, 2018:

*Line 11 (Food, Clothing, and Shelter). Line 18 (Fiduciary Fees and Costs), and Line 21 (Other administrative Fees and Costs) exceeded the amended budget filed on 05/16/17, but a second amended budget was not timely filed with the Court. An amended budget is required to be filed within 30 days after it is reasonably projected that expenses for a specific category will exceed the approved budget by \$2,000 or 10%, whichever is greater. The Court's record shows a second amended budget was filed on 08/01/17, which is two full months after the account period ended, and therefore, is too late to be considered by the Court. For example, an amended budget cannot be submitted for an account period that has already ended.*

*Recommendation:* *For future account periods, the conservator should file an amendment to the budget and provide notice in the same manner as the initial budget within thirty days after reasonably projecting that the expenditures for any specific category will exceed the approved budget by ten percent (10% or \$2,000, whichever is greater.*

3) PB2016-050160

CARR date November 7, 2017

*Fiduciary fees and costs exceeded the initial budget filed on 09/15/16 by \$45,185.41 and 180%, but an amended budget was not timely filed with the Court. An amended budget is required to be filed within 30 days after it is reasonably projected that expenses for a specific category will exceed the approved budget by \$2,000.00 or 10%, whichever is greater. The Court's record shows an amended budget was filed on 06/20/2017, which is nearly three full months after the account period ended, and therefore, is too late to be considered by the Court. For example, an amended budget cannot be submitted for an account period that has already ended.*

*Recommendation:* *For future account period, the conservator should file an amendment to the budget and provide notice in the same manner as the initial budget within thirty days after reasonably projecting that the expenditures for any specific category will exceed the approved budget by ten percent (10%) or \$2,000, whichever is greater.*

The Division did not find any record of the fiduciary *timely* filing an amended budget in accordance with the requirement that the fiduciary shall file an amended budget if spending exceeds \$2,000.00 (two thousand dollars) or 10% (ten percent) in any line of the budget once the fiduciary reasonably knows that the spending threshold and variance has or will occur.

The fiduciaries surpassed their initial projections and Court-approved spending thresholds and did not seek judicial approval prior to continuing to exceed the spending thresholds.

The fiduciaries filed amended budgets at the time they filed petitions to approve their fees and annual accounting at the end of the accounting period.

*Non-compliance with the Arizona Statewide Fee Guidelines*

Fiduciaries are required to comply with the Fee Guidelines. In their December 29, 2017 Response to the Director Initiated Complaint (17-0027/17-0028), Jeannean and Nicole, stated that, "at all times, With Love, acted in compliance with Arizona Statewide Fee Guidelines set out in A.C.J.A §3-303. In each matter, With Love acted on behalf of the Estate in a forward-thinking manner, in an effort to most efficiently administer each particular Estate."

In her interview with the Division, Nicole stated, "I've always been aware of the guidelines" and said she knew what was required of her regarding the Fee Guidelines.

Jeannean told Division staff that she was aware of the Fee Guidelines. When asked if she was complying with those guidelines she said, "I'm sure trying to, yes."

Nicole and Jeannean told Division staff that, for each case, their normal practice of business was to audit and review their fiduciary fees and costs monthly but that as of the last eight (8) months, approximately, they have been auditing and reviewing their professional fees and costs, as well as other expenditures, every two weeks. With respect to monitoring or tracking their professional fees Nicole said, "we all have time slips and we track all our time daily in increments of time and then all of that information is then inputted by the billing individual that assists with the billing at the office and then that is how the bills are generated and that's what we use to audit from. We bill for thirty (30) days so at the end of the month..."

Nicole stated that she reviews WLJ's fees to ensure compliance with thresholds set out under the Fee Guidelines and to ensure that billing is appropriate. She said they immediately correct errors and make determinations "based upon any types of credits or write-offs or no charges that we issue at that time." Nicole stated that she reviews for accuracy, clerical and/or typographical errors, block billing, time spent on tasks and to ensure that rates charged are commensurate with tasks performed.

The Division notes that the fiduciaries consistently billed \$25.00 monthly for records management fees and sometime in 2016 raised those monthly fees to \$50.00 per month. Nicole was asked to explain what those fees entailed to which she said, "basically covers all of our postage and all of ours copy costs. Essentially that, we send out voluminous information, bills and things for clients. The intention was to capture those costs. That doesn't exist anymore, as of eight (8) months ago we bill the actual cost for those items now. Prior to eight (8) months ago we felt we were in line with the guidelines billing the way that we had and it wasn't until the Court's accountant's report was issued indicating some flaws in our process that we took the proactive approach to go back to all our cases and spend hours reviewing them and issuing credits."

The Division reviewed Court records including the CARRs issued. In addition to frequent and recurrent accounting errors and inaccuracies that were routinely highlighted by the Court's Accountants over numerous probate cases, the CARRs, over years, pointed the fiduciaries to the Fee Guidelines and/or informed that the billings were not in compliance with the Fee Guidelines.

The following CARRs are not representative of all CARRs issued in any given case for any given accounting year. Often multiple CARRs were issued in the same accounting year after the fiduciaries responded to each CARRs. Further, the following CARRs do not represent every concern noted by the Court's Accountants. These examples detail the Court's recurrent concerns pertinent to the Fee Guidelines [emphasis added by the Division]:

1) PB2013-071060

CARR date April 3, 2015:

*The Fee Guidelines for the administration of a Guardian and Conservatorship indicate that the guardianship budget should include one routine visit per month. It was noted that in many cases there were multiple visits made to the Protected Person per week by fiduciary or her staff and in some instances there were multiple visits made by different staff people in the same day.*

*In addition [sic] it was noted that there were numerous activities that were charged at full professional rate (\$105 per hour) that might warrant a lower administrative or companion rate...*

*It was also noted that the budget for fiduciary services was \$12,000 and that there was no amendment to that budget as is required when the budget is overrun by more than \$2,000 or 10% of the budget. In this case the budget was overrun by over 70% and almost \$8,700.*

2) PB2015-002195

CARR date November 7, 2016:

8) *The statewide fee guidelines (ACJA 3-303 D(g)) indicates that: "the hourly rate charged for any given task shall be at the authorized rate commensurate with the task performed, regardless of who actually performed the task." "A fiduciary may only bill a fiduciary rate when performing services that required the skill level of a fiduciary; a companion rate when performing companion services, a bookkeeper rate when performing bookkeeping and bill-paying services for a client; and shall not charge when performing secretarial or clerical services, for example."*

*It was noted that this was not always the case in the fiduciary's fee statement as the fiduciary frequently charged a full fiduciary rate to deliver things to the Protected*

Person's home. The Court Accountant noted a specific instance in which 4 different rates (\$115, \$95, \$85 and \$65 depending on who performed the task) were charged to "sort the book collection of [named withhold by the Division] for distribution to charity and family members." The Court Accountant believes that the value of this task (sorting books) is, at the very most (and probably less if it was subcontracted to a person with a lower billing rate), \$65 per hour and that all work in this area should have been billed at \$65 per hour. Other examples become evident from a review of the fee statement.

Recommendation: Please review the Guardian and Conservator fee statements and identify any more examples of rates that should be more closely aligned with the value of work performed and propose a reduction to fees in an amended fee statement...

- 9) The Fee Guidelines (ACJA 3-303 D(c)) indicate that "Common fiduciary services rendered in a routine guardianship or conservatorship" (are as follows): "3) One routine personal visit per month by the fiduciary to the ward or protected person"

It is noted that the Guardian and Conservator (and their staffs) made many more visits than monthly to the home of the Protected Person. In some instances, there were more than two visits made by fiduciary and their staff in the same day and in some instances two individuals made a visit together with both of them billing the Estate.

Some of these visits were for medical or property management services but many appear to be routine visits "to check on the Protected Person." In addition, there were several visits in which the purpose of the visit was to deliver items to the Protected Person which visits could be consolidated into other visits by staff. In one instance, for example, \$44 in fees were incurred for visits to deliver a car battery warranty to the caregiver (unclear as to why the caregiver would get this) when this delivery could have been more efficiently incorporated into another visit by a lower paid staff person.

In other instances (see 12/11/15 of Conservator's fee statement), the Conservator charged \$115 to obtain and deliver \$200 in cash to the caregivers of the Protected Person. Most of these visits by the fiduciaries were also billed at the full fiduciary rate even when the purpose was to deliver things to the Protected Person. These delivery services should clearly have been billed at a lower rate since they can be done by lesser skilled staff (see above).

Recommendations: Please review both of the fee statements for the Guardian and Conservator and identify visits that could have been eliminated with cost savings to the Protected Person....

Many of the Property Management functions performed by the fiduciary could likely be performed by the Caregivers (e.g. see charge by Guardian on 5/11/16 regarding landscaper and locksmith and charges on 5/12/16 regarding carpet work

*performed in which the fiduciary fees were likely greater than the cost of the carpet work performed).*

*Certain Guardianship functions (scheduling of an appointment on 5/26/16) appear to be more effectively handled by a phone call than a visit to the office of the service provider.*

*Recommendation: Please advise this Court as to why so many functions performed by the Guardian appear to be performed with personal visits rather than more cost effective methods of communication.*

*It was noted that in several instances a member of the fiduciary's staff accompanied the fiduciary to various meeting and doctor's appointments (see 2/23/16 GDN, 5/4/16 GND and 5/27/16 GNS).*

*It was noted on several occasions (see 6/10/16 as an example) that the Conservator and Guardian communicate on matters that are within the other fiduciary's purview. This communication would not be necessary if there were only one fiduciary. It was also noted that members of the Conservator's staff take direction from the Guardian. It does not appear to be efficient to have two separate fiduciaries given the need for these additional costs.*

CARR date September 27, 2017, pertinently:

*The Court Accountant noted that the Conservator performed various accounting related functions that should have been prepared by staff at a lower rate (see, for example, bookkeeping services performed by NLS on 7/7/15 (.4 hours at \$115.00 per hour). It was also noted that the Conservator frequently went to the bank to get cash which was then delivered to the Protected Person for use in paying various maintenance expenses. These activities should also be billed at a lower rate. The Court Accountant noted that there were 19.2 hours that were billed at Conservator's rates (\$2,208.00) that should have been billed at a bookkeeper rate (\$85).*

*It was noted that during the months of September, 2015 and October 2015, 5 duplicative charges were recorded by KM. These charges (2 on 9/18/15, 1 on 9/20/15, 1 on 9/22/15, and 1 on 10/4/15) total \$318.50.*

*On 3/28/16 the Conservator charged \$120.50 to change a light bulb in Protected Person's home. This appears excessive and it is recommended that the activity be limited to 1 maintenance hour (\$65) and that \$55.50 be disallowed. In the future, it is recommended that this type of maintenance be done "in bulk and scheduled" because the cost of labor far exceeds the cost of materials (i.e., change all of the light bulbs in specific area rather than one bulb at a time)/*

*The Court Accountant noted that JMS performed various property management tasks (5/11/15, 5/14/15, 5/27/15, 6/2/15, 6/4/15, 6/9/15, 6/15/15, 7/7/15, 7/9/15, 11/4/15,*



*3/23/16) that should have been billed at a Property Management (\$65) rate rather than a full Guardian's rate (\$115). The total hours were 16.7 hours...*

*The fee guidelines indicate that the Guardian should make one routine visit per month to the Protected Person. The Court Accountant found that the Guardian was making shorter weekly visits to the Protected Person and that biweekly visits for Medi-sets were also being made. The Court Accountant believes that the frequency of visits is not consistent with the guidelines and hence recommends disallowance of all visits totaling more than 2 hours per month. The Medi-set visits are not routine and hence should be allowed in full.*

*On 1/15/16 two visits were made without calling ahead to make sure that the Protected Person was present. This resulted in no benefit to the Protected Person (who was not there at the time of the visits.)*

*On 2/23/16 two people went to Protected Person's dental appointment. The attendance of second person should be disallowed...*

*On 5/24/16 two people went to a Sun City Caregiver's meeting. The attendance of the second person should be disallowed....*

*On 6/30/15 JMS performed shopping tasks for Protected Person. These should be billed at a companion rate of \$55 and not at a full Guardian rate of \$115.*

The Division notes that in this matter, the ward was living at home with 24/7 (around the clock) caregivers provided by Sun Cities Caregivers and medications were being set up by the Sun Cities Caregivers nurse. Records showed that the agency had been providing care to this individual since October 20, 2010.

Per Letters issued, Jeannean was appointed guardian on May 2, 2015, and Nicole was appointed conservator on May 12, 2015.

Records demonstrated that on May 7, 2015, Jeannean traveled to Sun Cities Caregivers to meet with Lola Judy and to deliver the letters of temporary appointment. Jeannean notified Ms. Judy that WLJ's LPN "would take over the medication management and all physician appointments will be scheduled and attended by Sharon [LPN]." On May 26, 2015, Jeannean met with Ms. Judy and discussed "any additional fees charged...for medication oversight...according to Lola there have never been additional charges..."

Jeannean's direction to Ms. Judy regarding WLJ's LPN taking over medication management appears to contradict Jeannean's statements made to the Division. In her interview, Jeannean was asked to identify her LPN's role in situations where caregivers were involved and there was existing nursing oversight and medication management to which she said, "monthly wellness checks." When asked if there would be any reason for the LPN to take over any of those services, Jeannean replied, "No."

Further, in her interview, Nicole was asked how WLJ's nurse was utilized in situations where someone lived at home and had home care services including caregivers and

nursing oversight. Nicole said, “normally, we wouldn’t, if they are provided for with medical professionals in their home, we work closely with those medical professionals but Jeannean’s involvement is scaled back and our nurse is scaled back because they have care in the home, as long as they are able to afford that.”

The statements made by the fiduciaries are not supported by their billing records. In addition, the Annual Report of Guardian, filed with the Court on August 4, 2016 and signed by Jeannean on July 25, 2016, documented that the guardian, in the last 12 (twelve) months, saw the ward “Once a week, due to her being in her home.”

Moreover, as previously detailed in this Investigation Summary, from April 3, 2015 through May 31, 2016, WLJ’s LPN billed for a total of 51.7 hours at \$105.00 per hour (\$5,428. 50).

3) PB2014-071019

CARR date February 23, 2017

*The Statewide Fee Guidelines indicate that only one individual should attend Court hearing. On 5/9/16, two individuals attend a hearing.*

*It is unclear why it was necessary to have four people in attendance (JMS, JA, NLS and LB) at the meeting with the Protected Person on 5/10/16.*

*It is unclear why it was necessary to have two people in attendance (JMS and JA) at the meeting with the Protected Person on 5/12/16.*

*It is unclear why JMS charged a full professional rate for shopping services provided on 5/18/2016.*

*It is unclear why JMS charged a full professional rate for moving services provided on 5/16/2016.*

*It is unclear why JMS charged a full professional rate for delivery services provided on 5/19/16.*

*It is unclear why two people (NLS and LB) were required to go to Wells Fargo Bank to discuss the checking account on 6/2/16 and 6/6/16.*

*It is unclear why JMS charged a full professional rate to do pick up and delivery services on 6/14/16 and 6/15/16 also unclear as to why JA also made a trip to Bethany Assisted Living to pick up and deliver on the 6/14/16 on the same day JMS did.*

Recommendation: Please review the Statewide Fee Guidelines for charging professional fees and your fee statement addressing the specific questions above and adjusting your fee statement and your Account to reflect compliance with the Fee Guidelines.

4) PB2015-070951

CARR date October 11, 2017, pertinently:

*On August 11, 2017 the Court ordered the Court Accountant to provide a report which details the concerns the Court Accountant has with regard to various fees and expenses that were charged by the Guardian and Conservator to this Estate during the First Account period (11/20/15 – 8/31/16).*

***Use of a full professional rate versus a lower staff rate for services rendered [sic]***

*ACJA 3-303 A (2)g) states that “The hourly rate charged for any given task shall be the authorized rates, **commensurate with the task performed** [sic], regardless of whom actually performed the work...” For the Guardianship, some of the work for which a full professional rate was charged should have been billed at a lower clerical rate and for the Conservatorship, some of the work for which a full professional rate was charged should have been billed at a lower bookkeeper or accountant’s rate. In this schedule the difference between the full professional rate and the lower rate characteristic of the work performed has been recommended for disallowance.*

***Multiple attendees at Court hearings [sic]***

*ACJA 3-303 A 3d [sic] indicates that only one person should attend a court hearing. In some instances both the Guardian and Conservator attending hearings together. This appears to be improper because the decision to name a separate Guardian and Conservator was undertaken for the benefit of the fiduciaries and not for the benefit of the Protected Persons. One of the charges associated with multiple attendees is recommended for disallowance. This disallowance is divided between the two attendees.*

***Premature Work Efforts by Guardian [sic]***

*The Guardian incurred various costs to investigate living options for the Protected Person before she was appointed. Since there might not have been an opening for the Protected Person in the future, this work was premature and hence should not be charged to the Protected Person. The Guardian should undertake efforts of this nature only after she has been vested with the authority to make decisions in that area.*

***Unnecessary Guardian and Conservator Communication [sic]***

*The Court appointed a separate Guardian and Conservator at the request of and for the benefit of the fiduciaries. Because of this arrangement, the fiduciaries have spent many hours in communication sharing information between each other that would not be required to be shared if only one fiduciary was named. Since these communications result from the nature of the appointment requested by the fiduciaries and since these communications create no net benefit to the Protected person, the Court Accountant*

*believes that these communications should not be charged against the Estate and hence they are recommended for disallowance as unnecessary costs.*

***Attendance of multiple staff at client meetings [sic]***

*It was noted that multiple individuals attended certain meetings with the Protected Person. In almost all of these instances the Guardian attended these meetings. Consequently there was no need for staff to attend the meetings also. For this reason, the costs associated with staff attending a meeting with the Protected Person were recommended for disallowance.*

***Excessive Client Visits by Guardian [sic]***

*The Statewide Fee Guidelines (ACJA 3-303 A 3 C 2) [sic] indicates that the normal tasks of the Guardian includes[sic] monthly routine visits. The Court Accountant recognizes that many of the visits made to see Protected Person were non-routine but it appears that a 1 hour per week visit (36 hours over a nine month Account period) should be sufficient to meet the routine and non-routine needs of the Protected Person. Guardian and staff made close to 50 visits to Protected Person totaling 50.3 hours resulting in recommended disallowance of 14.3 hours at \$115 per hour.*

***Direct Deliveries Made (Room and Board and Other Payments) [sic]***

*During the Account Period, certain deliveries were made by direct visit to the payee. These could more effectively been handled by mail and hence all time in excess of .1 hours per instance (time associated with mailing payments) are recommended for disallowance.*

***Records Management [sic]***

*Both the Guardian and Conservator charged fees for Records Management. These fees appear to be duplicative charges for clerical activities related to maintenance of Account files. For this reason they are recommended for disallowance.*

***Conclusion [sic]***

*Based on a line item by line item review that is documented in the attached spreadsheets, it is recommended that \$4,000.25 be disallowed as it relates to the Guardian and \$1,6380.50 be disallowed as it relates to the Conservator.*

5) PB2016-050160

*The last 17 pages of the fiduciary fee statement relating to additional charges show 12 monthly charges, totaling \$600.00, relating to Records Management by the fiduciary including two such charges in November 2016. These charges appear to be secretarial and clerical in nature, which are not allowable under the fee guidelines.*

Recommendation: The Court should be provided with an explanation about why the estate is being charged for Records Management. If these charges are indeed of a secretarial and clerical nature, then it is recommended the \$600.00 be credited back to the estate.

The fiduciary fee statement shows numerous entries that required two or three employees to perform the same task that may not have required more than one employee. For example, there were entries labeled as "Assisted Lindsay with preparing bills for payments." According to the Transaction Log, there were 89 disbursements over the 9 month account period, which averages out to approximately 10 bills to pay each month. It doesn't seem necessary to have multiple employees performing this task at the same time. Another example includes two employees delivering a cake and card to the protected person.

Recommendation: The Court should be provided with an explanation as to why there were numerous entries on the fee statement that included two or three employees to perform the same task that may not have required more than one employee.

6) PB2016-050493

CARR date March 26, 2018:

The last several pages of the fiduciary fee statement relating to additional charges show monthly charges totaling \$600.00 relating to Records Management by the fiduciary including two such charges in November 2016. These charges appear to be secretarial and clerical in nature, which are not allowable under the fee guidelines.

Recommendation: The Court should be provided with an explanation about why the estate is being charged for Records Management. If these charges are indeed of a secretarial and clerical, then it is recommended the \$600.00 be credited back to the estate.

The fiduciary fee statement shows what appears to be excessive billing for the hearing on Petition for Appointment of a Permanent Guardian and Conservator on 08/09/16. The statement shows four different individuals attending the hearing and charging for their time with a total combined charge of \$1,565.00.

Recommendation: The Court should be provided with an explanation as to why four different individuals were required to attend the hearing and why the protected persons should be responsible for the entire combined charge of \$1,565.00 to attend a one hour hearing.

7) PB2016-071488

CARR date February 13, 2018, pertinently:

Conservator:

*ACJA 3-303 A 2 (g) states "The hourly rate charged for any given task shall be at the authorized rate, commensurate with the task performed regardless of whom actually prepared the work." [sic]*

*In this fee statement it was found that a full fiduciary rate was charged to various bookkeeping functions and that a full fiduciary rate was charged to deposit cash of the Protected Person. These tasks clearly should have been performed by a Bookkeeper (in the case of Bookkeeping tasks) and a courier rate (in the case of cash deposit services for the Protected Person.*

*ACJA 3-303 A 3 (c) 1 states "Routing bookkeeping, such as disbursements, bank reconciliation, data entry of income and expenditures, and mail processing: four (4) hours per month, at a commensurate rate for such services." [sic]*

*In this fee statement it was found a total of 5.6 hours of bookkeeping charges, per the Fee Guidelines it is recommended to disallow charges for 1.6 hours.*

*ACJA 3-303 A 3 (e) states "Each fiduciary and guardian ad litem shall not bill for more than one person to attend hearings, depositions, and other Court proceedings on an Estate, absent good cause." [sic]*

*The Statewide Fee Guidelines indicate that only one individual should attend a Court hearing.*

*On 1/6/2017, three individuals attended the Court hearing to appoint temporal fiduciary (NLS, LB, JMS). It is recommended that all charges, with the exception of those incurred by NLS, be disallowed.*

*On 1/30/2017[sic], three individuals attended the Court Hearing [sic] to appoint permanent fiduciary (NLS, LB, JMS). It is recommended that all charges, with the exception of those incurred by NLS, be disallowed.*

*ACJA 3-303 A 2 (d) [sic] states "Necessary travel time and waiting time may be billed at 100% of the normal hourly rate, except for time spent on other billable activity; travel time and waiting time are not necessary when the service can be more efficiently rendered by correspondence or electronic communication, for example, telephonic court hearings" [sic]*

*In this fee statement it was noted various charges for unnecessary travel, and waiting.*

*On 12/20/2016, NLS made an unscheduled visit to Del Webb Sage Unit to meet with "Sonia." Due to the fact that the visit was unscheduled, "Sonia" was not present, and "waited until she was available." Conservator charged for the waiting time. No value to the Protected Person. Amount charged (\$172.50, the waiting time should be disallowed. On 1/17/17 NLS "Travel to Bank of America, to sign documents." In this fee statement it was noted there are two charges on the same day for the same service.*

*On 1/18/2017, two individuals NLS and MG "Travel to Bank of America." It is unclear why it is necessary to have more than one staff member make trips to the bank to deal with banking activities.*

*On 1/24/17 LB "Travel to Bank of America to obtain bank records." It is recommended to disallow this charge as it seems unnecessary that conservator needs bank records from 2015. In addition, LB also traveled the day before, on 1/23/17, to obtain bank records.*

*ACJA 3-303 A 2 (f) 2 [sic] states "Billable time does not include: 2. Internal business of the Professional, including clerical or secretarial support to the Professional." [sic]*

*The Conservator's staff routinely "scanned Assets, create files, and updated Asset Index etc.*

*Duplicate Charges were found to be charged by NLS, LB and MG on the following dates....*

*Guardian:*

*ACJA 3-303 A 3 (c) 2 [sic] states "Routine two (2) hours per month if the ward is in a facility, at a commensurate rate for such services." [sic]*

*Frequent Client Visits by Guardian – In this fee statement it was noted guardian JMS billed 17.1 hours (\$1,936.50) for visits in the 47 days of her involvement with the Protected Person. It is recommended to disallow all visits with the exception of those where guardian meets and drops-off the Protected Person from hospital to the senior living facility which total 3 hours.*

*ACJA 3-303 A 2 (d) states "Necessary travel time and waiting time may be billed at 100% of the normal hourly rate, except for time spent on other billable activity; travel time and waiting time are not necessary when the service can be more efficiently rendered by correspondence or electronic communication, for example, telephonic court hearings." [sic]*

*In this fee statement it was noted various charges for unnecessary travel, and waiting by JMS and JA.*

*Two individuals performed shopping tasks on same day resulting in two charges for routine shopping activities.*

*On 1/5/2017 [sic] JMS went to Walmart and Dillard's to shop for Protected Person and JA went to Bed Bath and Beyond, and Target to shop for Protected Person also. The charges of one of the individuals should be disallowed.*

*Between 12/29/16 and 1/3/17 JMS and JA billed \$1,014.50 for assisting packing and moving the Protected Person to her new apartment. It is unclear the purposes of this charges [sic] due to the fact that Behr movers charged \$407.00 for the move.*

*On 1/6/2017 [sic] KM went to Palo Verde senior living and charged 1.3 hours \$85.00) to hang pictures, an appropriate rate (\$55.00) for this service and the rate that was actually charged should be disallowed.*

*ACJA 3-303 L [sic] states “The work actually performed, including the time actually expended, and the attention and skill-level required for each task, including whether a different person could have rendered better, faster, or less expensive service.” [sic]*

*Two individuals performed patient care tasks on same day resulting in two charges for routine activities charged to the estate.*

*On 1/9/2017 [sic] KJ accompanied Jeannean to Banner Del Webb Medical Center “to transport Sonia to memory care and did complete vital signs.” These services were unnecessary as Protected Person was in a medical center where vital signs are monitored by facility nurses and doctors by fee statement.*

*Clerical functions...Duplicate charges...[sic]*

*ACJA 3-303 A 2 (k) states “Time and expenses to correct or mitigate errors caused by the professional, or their staff, are not billable to the Estate.” [sic]*

*Guardian error charged to the estate. It was noted JMS charged \$46.00) for signing petition and letters on 12/27/2016. However, it also charged \$11.50) on 12/28/2016 for a phone call due to “missed a signature on court documents.”*

*The total disallowance recommended by the Court’s Accountant was \$10,931.75.*

*The Division notes that in this matter, Jeannean was appointed temporary guardian on January 6, 2017 and Nicole was appointed conservator on January 13, 2017. After hearing was held to determine if permanent guardianship/conservatorship was required, the Court determined that permanent guardianship and conservatorship was not required and terminated the temporary guardianship and conservatorship.*

#### *The Court’s Concerns*

*In addition to the various CARRs issued, the Court has directly expressed concerns for the fiduciaries’ billing practices:*

##### *1) PB2013-071060*

*The Honorable J. Justin McGuire’s Minute Entry of November 1, 2016, pertinently [emphasis added]:*

*The Court notes that the Conservator has done much to care for and reduce certain expenses for the Protected Person. However, the Court is obligated to be vigilant regarding all expenses incurred by the Protected Person.*



*The Court notes that the Conservator, in response to the Court's concern, immediately set up a system to permit the delivery of the monthly Room and Board payment which eliminated the need of hand delivering the check at a rate of \$55.00 per hour. The Court can find no reason why this system could not have been put in place prior to the beginning of the current accounting period.*

**THE COURT FINDS** [sic] *the fees charged for hand delivery of the monthly Room and Board checks were not necessary or reasonable, and will not be approved. The total dollar amount related to this activity is \$163.50.*

**THE COURT FURTHER FINDS** [sic] *that the Conservator's practice of charging the full fiduciary rate of \$105.00 per hour for accompanying the Protected Person on visits to the doctor was not reasonable. The Court notes that the Conservator has now arranged for in-house treatment of the Protected Person's routine medical needs, and can find no reason why this procedure could not have been put in place prior to the beginning of the current accounting period. The Court will approve this service at the lower rate of \$55.00 per hour. The difference between the amount billed and the amount the Court will approve totals \$665.00.*

**THE COURT FURTHER FINDS** [sic] *that the Conservator's practice of visiting the Protected Person more than once per month and often more than once per week was not necessary or reasonable. The Court notes that, on the occasions where the visit involved more than just checking in on the Protected Person, most, if not all, of the tasks performed on these routine visits could have been accomplished by email or telephone call. Therefore, the Court will not approve the fees charged for the following visits: October 8, 2014, October 15, 2014, October 16, 2014, October 30, 2014, November 10, 2014, November 11, 2014, November 17, 2014, December 1, 2014, December 15, 2014, December 18, 2014, January 13, 2015, January 19, 2015, January 26, 2015, January 30, 2015, February 2, 2015, February 11, 2015, February 16, 2015, February 23, 2015, February 24, 2015, March 24, 2015, April 23, 2015, June 12, 2015, June 25, 2015, July 13, 2015, July 30, 2015, August 17, 2015, August 20, 2015, September 2, 2015, September 8, 2015 and September 18, 2015. The total dollar amount related to these visits is \$1,878.50.*

*In sum, the Court will approve the Fiduciary Fees in the amount of \$13,538.01 (\$16,245.01 billed minus \$2,707.00 (\$163.50 for rent delivery, \$665.00 differential for companion rate on doctor visits, and \$1,878.50 for unnecessary visits)). The Court will approve all other expenses as requested in the Second Annual Accounting.*

2) PB2014-071019

The Honorable Frank W. Moskowitz's Minute Entry of September 11, 2017, pertinently:

*The Court Accountant believes the fiduciaries fees remain high even after the \$1,050.50 credit. This is at least the third Accounting by these fiduciaries where the Court Accountant has recently raised concerns with this Judicial Officer about their billings*

*being high or excessive and this Judicial Officer has set an Appearance Hearing and requested a more detailed review and analysis by the Court Accountant.*

*The Court is concerned about the billing practices of these fiduciaries.*

In addition, the Honorable Frank W. Moskowitz ordered the Conservator, in part, and to no expense to the estate, to file a report that addresses the following:

- a) An explanation why the fiduciaries are entitled to any payment when it does not appear that they complied with A.R.S section 14-5109(A) and Rule 33(a) of the Arizona Rules of Probate Procedure;*
- b) A listing of the specific extraordinary fiduciary fees...*
- c) An explanation of they any of the fiduciary fees incurred prior to their appointment should be awarded and how those fees comply with the factors set forth in A.R.S. sections 14-1104(b) and 14-5109(c), Rules 10.1 and 33 of Arizona Rules or Probate Procedures, and the Arizona Statewide Fee Guidelines...*
- d) An explanation why the Guardian billed for what appear to be Conservatorship tasks and the Conservator billed for what appear to be Guardian or non-Conservator tasks;*
- e) An explanation of the \$1,852.54 worth of additional charges...;*
- f) An explanation of how multiple billings for the same office and/or other conferences by some or all of the attended comply with the Governing laws;*
- j) A breakdown and itemization of the Guardian's fees, and the amount of time spent on visits or other routine services, and a reasonable explanation if the time billed exceeded the time allotted per the Governing laws, and a listing of any secretarial, clerical, and/or other overhead that is not billable;*
- k) A breakdown and itemization of the Conservator's fees, and the amount of time spent on visits or other routine services, and a reasonable explanation if the time billed exceeded the time allotted...*

3) PB2016-071488

The Honorable J. Justin McGuire's Minute Entry of September 7, 2017, pertinently [emphasis added]:

*The Court is in receipt of a report prepared by the Court Accountant which indicates that, because of the extraordinarily large amount of fees incurred by the Temporary Guardian and Conservator during their very abbreviated appointment in this case, the case falls into the High Risk category.*

*The Court is thus referring this matter back to the Court Accountant for preparation of a report which provides specific details of any and all charges which appear to be excessive, unnecessary, duplicative, in violation the Statewide Fee Guidelines and/or are otherwise concerning.*

4) PB2016-070706

The Honorable J. Justin McGuire's Minute Entry of October 18, 2017, pertinently [emphasis added]:

*The Court having received a report from the Court Accountant stating that the Conservator's fees fall into the "High Risk" category, and the Court having noted the apparent inclusion of certain charges for secretarial/clerical work in the billing statements submitted by Court-Appointed Counsel and counsel for Naomi Spielman,*

5) PB2015-002195

In her Minute Entry of May 18, 2018, regarding the second annual account, the Honorable Lori Horn Bustamante ordered approving the fiduciaries' account and stated, pertinently [emphasis added]:

*Although the court has approved the accounting based in part, upon the unique situation of Ms. Frieders, the court notes the Guardianship and Conservatorship fees are high and consumed approximately 4% of the estate. The fees are higher than would be anticipated pursuant to the fee guidelines. For example, the fee guidelines suggest 5 hours per year to prepare the account and budget yet the Conservator spent 31 hours. In addition, Ms. Frieders had a full time paid caregiver yet the Guardian appeared to be overly involved in the care of Ms. Frieders thereby incurring additional costs to the estate. The court recognizes that Ms. Frieders has passed away and recognizes that each client may have unique situations that require additional time and attention; however, the fiduciaries are hereby put on notice that they need to take steps in the future to be more mindful of the fee guidelines.*

6) PB2016-050160

In his Minute Entry of June 1, 2018, the Honorable Andrew J. Russell wrote [emphasis added]:

*The Court has reviewed and considered the Petition for Approval of First Annual Account filed June 20, 2017, submitted by the Conservator for Ms. Petro. The Court Accountant assigned to this matter has recommended approval of that account, and court-appointed counsel for Ms. Petro has no objection to such approval. The Court agrees, and will therefore approve the First Annual Account.*

*The Conservator also seeks approval for more than \$75,000 in fiduciary fees and costs (not including fees/costs for the fiduciary's counsel) incurred during this nine-month accounting period. These fees appear to include both guardian and conservator services.*

*The Court has significant concerns with the amount of fees/costs requested. These concerns include but are not limited to the following:*

- *Block billing: Block billing is not allowed. See generally Ariz. R. Prob. P. 33 and comment thereto; see also Ariz. Code Jud. Admin. § 3-303(D)(2)(c). The Conservator's*

*practice of including additional detail for billing entries is admirable and appreciated. However, combining multiple services in one time entry prevents the judicial officer from determining whether the amount of time spent on any particular service is reasonable. This happens repeatedly throughout the billing statements. An example is the first JMS billing entry for 4/22/16, which includes travel, a meeting, a telephone call, and a voice mail message all in one billing entry.*

- *Multiple fiduciaries attending hearings: Absent good cause, only one fiduciary may bill for attending a court hearing. See Ariz. Code Jud. Admin. § 3-303(D)(3)(e). The Court understands that the Conservator and the Guardian are related, and that it may make sense for both to attend some court hearings. Yet four fiduciaries billed approximately \$1,200 (it is impossible to tell exactly, because of block billing) to attend the June 20, 2016 hearing. That hearing lasted 32 minutes.*
- *Multiple fiduciaries billing for work where only one was needed: An example is JA's 4/25/16 billing entries for accompanying JMS to a neighbor's house to get background information, and to Cigna "to deliver a Physician's Statement for Irene's PCP to fill out." Someone identified as "LB" also billed for visiting the neighbor's house. One person should have been sufficient to complete these tasks.*
- *Unreasonable billing:*
  - *Both JA and JMS billed for counting loose change found at Ms. Petro's residence. Together they billed \$120 to count change that likely totaled much less.*
  - *JA billed \$170 on 6/9/16 for "[a]ccompanied Jeannean to pick up boxes and traveled to Pathways to look at Irene's room." Two people were not needed for such a task.*
  - *On 6/30/16, LB billed \$332.50 simply to accompany the Conservator while the Conservator closed accounts at Chase Bank and deposited money at Mutual of Omaha Bank. The protected person should not have to pay two people to do such tasks.*
  - *NLS billed \$57.50 on 7/7/16 to go to the Glendale Social Security Administration office, only to leave because the line was too long. This service provided no benefit to the protected person.*
  - *On 7/21/16, LB billed \$142.50 to return a vacuum to a neighbor. This amount may well have exceeded the value of the vacuum itself.*
  - *SR billed \$92 on 10/18/16 to travel to a pharmacy and pick up Ms. Petro's medications, only to find out that another of the Conservator's employees retrieved the medications the previous day.*
  - *To make it worse, SB then billed the protected person an additional \$23 to talk with the Conservator and apologize for SB's own "confusion." See SB's fourth billing entry on 10/18/16. The Court cannot fathom why the Conservator believes it is appropriate to force the protected person to pay for miscommunication between the Conservator's employees, and then pay even more for an employee's apology for such miscommunication.*

- *Billing for secretarial or administrative services. “A fiduciary . . . shall not charge when performing secretarial or clerical services.” See Ariz. Code. Jud. Admin. § 3-303(D)(2)(g)(2). The Conservator did this multiple times. For example,*
  - *LB’s 5/2/16 entry for notarizing an affidavit and mailing it to the Conservator’s counsel.*
  - *LB’s 5/3/16 entry for “File review: Updated file with applicable documents.” Similar “file review” billing entries appear throughout the billing statements.*
  - *In addition to unreasonably billing for secretarial-type services, the Conservator also charged Ms. Petro \$50 per month for “records management.”*
- *Hourly billing by employee for home repairs and painting: Between 8/3/16 and 10/24/16, the Conservator’s bills include at least 94.1 hours billed by “KM” for repairs to and painting of Ms. Petro’s house. KM billed at \$85/hour. The total amount billed was \$7,910.50. The billing entries for these services provide almost no detail as to which repair was involved, which part of the house was painted, etc. The court has not been able to locate anything in the file that identifies which of the Conservator’s employees is “KM”, and it is unclear why the Conservator chose to use one of its employees to complete the repairs and paint the house, rather than using professionals for those services.*

*The Court does not reduce fiduciary fee requests haphazardly, and appreciates that the Guardian and Conservator did provide services to Ms. Petro and deserve compensation. However, that compensation must be reasonable under the circumstances.*

*IT IS ORDERED approving fiduciary fees and costs for the first accounting period in the amount of \$45,035.41. Any fees or costs paid to the Conservator above this amount (for the first accounting period) shall be repaid to the Conservatorship account no later than June 29, 2018.*

*The Court has also determined that this matter should be referred to the Arizona Supreme Court’s Fiduciary Board for further review of the fiduciary’s billing practices.*

*The Order Approving First Annual Account is signed as amended by the Court on June 1, 018, and filed (entered) by the clerk on June 1, 2018.*

*In his subsequent Order, the Honorable Andrew J. Russell wrote, pertinently [emphasis added]:*

4. *Pursuant to Rule 33 of the Rules of Probate Procedure, the Conservator’s fees and expenses incurred by fiduciary totaled \$84,035.41. This amount is not reasonable.*

*IT IS THEREFORE ORDERED THAT:*

- C. *The fiduciary fees and expenses of \$45,035.41 are approved;*

The information presented herein identifies persistent concerns about the fiduciaries' billing practice over several years.

Jeannean and Nicole contend that they operate in compliance with the Fee Guidelines. The fiduciaries told Division staff that together, as a matter of business practice, they audit and review their professional fees and billing monthly and during those monthly reviews. Nicole stated that she checks for accuracy, block billing, time spent on tasks, duplicative charges, and said they ensure that rates are commensurate with tasks performed etc. Nicole stated that during these routine monthly reviews she immediately corrected any problems found.

In context of the Fee Guidelines, the Division's review of the fiduciaries' billings over numerous probate cases revealed that the fiduciaries consistently allowed billing for exceeding routine visits to wards and/or excessive visits to wards. Block billing, duplicative charges and billing at full fiduciary rates rather than at more appropriate companion rates were found. The Division also found that, at times, the guardian and conservator and their staff did bill at appropriate shopping or companion rates.

The Division also notes that the fiduciaries regularly charged protected persons \$25.00 - \$50.00 monthly for Records Management Fees which, by Nicole's statements, "basically covers all of our postage and all of ours copy costs. Essentially that, we send out voluminous information, bills and things for clients. The intention was to capture those costs. That doesn't exist anymore, as of eight (8) months ago we bill the actual cost for those items now. Prior to eight (8) months ago we felt we were in line with the guidelines billing the way that we had and it wasn't until the Court's accountant's report was issued indicating some flaws in our process that we took the proactive approach to go back to all our cases and spend hours reviewing them and issuing credits."

The Division found that the fiduciaries actively engaged in interoffice communication or "staffing" between the guardian and conservator and/or them and their respective staff members. While interoffice communication and staffing may be appropriate there were numerous examples showing that communication seemed unnecessary and, seemingly, was done just to keep others informed even if it was for routine matters.

Examples of what the Division considers excessive and/or unnecessary charges appear throughout the fiduciaries' involvement across all cases, evidenced by the fiduciaries' billing records. The following are several cases that reveal some of these issues, but these examples do not represent all excessive or unnecessary charges and do not include all cases whereby these issues were noted:

1) PB2013-071060

On November 21, 2013 the proposed ward's husband filed an emergency petition with the Court for appointment of guardian, conservator and successor trustee and he nominated Jeannean for appointment and for which Jeannean filed an Affidavit on the same date [emphasis added]:

*The Petitioner nominates Jeannean Sabatina dba With Love, Jeannean, LLC, an Arizona limited liability company, FLN#20615, to act as Guardian and Conservator in this matter.*

Jeannean was appointed, per Letters issued, on December 13, 2013.

On November 20, 2013, Jeannean block billed for 1.40 hours at \$105.00 per hour (\$147.00) to [emphasis added]:

*“Travel to the Forum at Desert Harbor and Desert Winds to inquire about memory care placement for Sue. The Forum does not have a memory care unit and Desert Winds has no room availability. I still feel that Rock Creek is the most appropriate placement for Sue, most particularly because of the programming.”*

That same day, Jeannean called Rock Creek to inquire about placement and learned that there was a semi private room available. The call was billed at 0.10 at \$105.00 per hour and cost the protected person \$10.50. Therefore, Jeannean elected to travel to two separate facilities to simply inquire about and obtain information on the facility’s programs and availability. She also placed a telephone call to another facility for the same purpose at considerably different costs to the protected person, as noted above. The proposed ward was placed into Rock Creek memory care on November 21, 2013.

Between November 22, 2013 to December 31, 2013, the fiduciary’s office and staff including Jeannean, Nicole, and the LPN visited the ward at Rock Creek 14 (fourteen times) for various reasons including simply stopping in to check on her. This included multiple visits and separate stop in to check on her visits from Nicole and the LPN on November 26, 2013. Nicole billed the protected person for 0.40 hours at \$105.00 per hour to stop in and the LPN billed for .30 at \$105.00 per hour also to stop by and see the proposed ward.

In addition, although the petition filed by the proposed ward’s husband on November 21, 2013, nominated Jeannean to be appointed as guardian, conservator and successor trustee, and excluded Nicole from appointment, on December 3, 2013, Nicole billed the proposed ward for 1.50 hours at \$105.00 (\$157.50) to “Prepare for and attend Temporary Hearing of Guardian, Conservator and Successor Trustee with Jeannean.”

Jeannean billed the protected for 1.60 hours at \$105.00 per hour to “Travel to Surprise Court with Nicole to attend emergency hearing for appointment of temporary G/C and successor trustee for Sue. Conversation with Nicole on the return to WLJ office outlining the list of priorities for Sue.

Between January 2, 2014 and December 15, 2014, there were approximately 69 (sixty-nine) visits to the ward by various WLJ staff including, Nicole and the LPN. Most of the visits were related to simply follow up with or checking in on the ward. Other visits including transporting her to medical appointments and other visits included addressing

various issues. Many of the follow up or checking in visits were done on conservative days and, seemingly, done so randomly.

The Division further notes that although Nicole was not a Court-appointed fiduciary in this matter, she was actively involved in the case performing a wide variety of fiduciary related tasks and she billed at her full fiduciary rate of \$105.00 hourly. Nicole's involvement, reflected in the billing records included in the first annual accounting, were 55.8 hours at \$105.00 per hour for a total charge of \$5,859.00 to the protected person.

Duplicative charges were noted on December 10, 2013 whereby Jeannean travelled to Rock Creek to deliver pajamas, mark the clothing with the ward's name and place them in her closet. Jeannean billed twice once for .50 hours at \$55.00 per hour (shopping rate) but also billed for the same tasks at .80 at \$105.00 (fiduciary rate).

Another issue noted by the Division was the fiduciaries seemingly spending quarters to save dimes type of approach. For example, on April 9, 2014, Jeannean billed 0.80 hours at \$105.00 per hour (\$84.00) to "Travel to Rock Creek to meet with the beautician for scheduling Sue a nail appointment on a monthly basis. Lori will begin scheduling next week. Saw Sue briefly before leaving."

On September 22, 2014, Jeannean traveled to Rock Creek to "meet with the beautician regarding Sue. For the time being, Sue will only have a haircut and manicure every 6 weeks. I explained to the beautician that Sue's funds are tight until we can sell her Juniper Ridge property and the Sun City home." To accomplish this Jeannean billed for 0.60 hours at \$105.00 (\$63.00).

Billing showed that beginning on June 2, 2014, Jeannean and her office started dealing with an issue related to the ward missing her "SAS" shoes and, instead, was wearing slippers, which may have hampered her ability to ambulate and created a safety concern regarding risk of falling. To alleviate and resolve the safety concerns involving the missing shoes, the fiduciary and her office expended considerable time and effort. Tasks included travel to Rock Creek, directing facility staff to remove the slippers and place the SAS shoes on the ward, fiduciary involvement in searching the facility to locate the missing shows, and following up on the matter. According to records reviewed the fiduciary total time billed to address this issue incurred approximately \$558.00 in costs.

On October 27, 2014, Jeannean became aware that the ward's husband had been charging his meals to her account when he visited with her. To address this issue and stop the ward's husband from charging meals to his wife's account, the fiduciary and her office billed approximately \$252.00 for time expended. The Division did not determine how much the ward's husband charged for meals on his wife's account.

## 2) PB2016-070706

On March 23, 2016, Jeannean and her staff was involved in arranging for a beauty salon appointment for the ward. The guardian's staff traveled to Sun Beauty Hair Salon to



schedule an appointment with the ward's beautician and then traveled to Royal Oaks to inform staff and the ward that she has the salon appointment scheduled. The Division notes that support staff also traveled to Royal Oaks on that day to drop off a blanket for the ward. For the tasks involving the hair appointment, the guardian's office billed 0.8 hours at \$85.00 per hour, totaling \$68.00.

On March 24, 2016, Jeannean and her staff billed regarding a call to the guardian informing that WLJ staff brought the ward to the salon but forgot to bring a check to pay the salon. Billing included an office conference with Jeannean about the ward's hair payment and support staff traveling to Sun Beauty salon to deliver payment for the ward's appointment on that date. Total cost to the ward for that day was \$266.50 for three (3) hours billed at \$85.00 and the fiduciary rate of \$115.00.

The total cost of the fiduciary tasks related to the ward's hair appointment was \$344.50.

Other examples in this case include the guardian's office charging the ward \$216.00 for various tasks related to purchasing the ward needed bras on April 14, 2016; charging \$140.00 for tasks related to looking for shoes at the ward's home on April 21, 2016; and charging \$204.80 for tasks related to getting a walker from a facility. The ward passed away and the walker was to be placed into storage. The Division notes that the walker was purchased for the ward at CVS Pharmacy on June 18, 2016 for \$97.90.

### 3) PB2016-050160

On September 19, 2016, Jeannean had a conversation with her support staff requesting her staff to take the ward \$20.00 from an account and that Jeannean would deliver the money to the ward when the fiduciary went to visit her this week. The support staff also billed for that conversation. Support staff traveled to US Bank to withdraw \$20.00 for the ward. Billing included an office conversation with Jeannean asking support staff to "break" the ward's \$20.00 bill while at the store to \$10.00, \$5.00 and five (5) \$1.00 bills. Support staff then traveled to CVS Pharmacy to obtain change for the ward's \$20.00 (no charge for this task) although mileage was charged.

The total charge to the protected person was \$55.40 to have the guardian's office get the ward \$20.00.

On June 30, 2016, Nicole and her staff collectively billed the protected person for 3.5 hours for a total charge of \$332.50 to travel to Chase Bank to close accounts and to Mutual Omaha to deposit funds.

On August 5, 2016, guardian's staff traveled to the facility to deliver pillow cases, socks and a mattress pad although the new items agitated the ward. The staff (LPN) billed for 2.5 hours at \$115.00 hourly for a total of \$287.50.

On August 1, 2016, Jeannean traveled to the facility and took the ward to the store where she purchased many small items and dog food/treats. The ward stopped to pick up a

sandwich and was transported back to the facility. The guardian block billed for those tasks but charged for 2.3 hours, at \$115.00 per hour, totaling \$264.50 for the endeavor.

In addition, in this matter, the Honorable Andrew J. Russell's Minute Entry of June 1, 2018, identified unreasonable billings:

- Jeannean and support staff together billed \$120.00 for "counting loose change found" at the ward's residence. The charges likely exceeded the change found.
- Jeannean's support staff billed \$170.00 on June 9, 2016 to accompany Jeannean to pick up boxes and traveled to Pathways to look at the ward's room.
- On June 30, 2016, Nicole's support staff billed \$332.50 to accompany the Conservator while the Conservator closed bank accounts and deposited money.
- On July 7, 2016, WLJ support staff billed \$142.50 to return a vacuum to a neighbor. This amount may well have exceeded the value of the vacuum itself.
- WLJ support staff \$92.00 on October 18, 2016 to travel to a pharmacy to pick up the ward's medications only to find that another of the Conservator's employees retrieved the medication on the previous day. To make it worse the support staff then billed an additional \$23 to talk to the Conservator and apologize for the support staff's own "confusion."

The Division notes that Fee Guidelines allow five (5) hours per year for the conservator's account and budget preparation.

- In PB2015-070937, Nicole and her staff billed 29.4 hours (\$3,111.50) on accounting related tasks from July 11, 2016 through September 20, 2016.
- In PB2015-070041, Nicole and staff billed 19.9 hours (\$2,089.50) for accounting related tasks from January 1, 2016 through March 14, 2016.
- In PB2015-070951, Nicole and staff billed 13.3 hours (\$1,271.50) for accounting related tasks from September 2, 2016 through September 29, 2016. To make corrections per the CARR, Nicole and staff billed 9.7 hours (\$1,115.50). Nicole also discounted 4.7 hours.
- In PB2015-002195, Nicole and staff billed 44.7 hours (\$4,860.50) for accounting related tasks from May 20, 2016 through January 19, 2017. To correct/amend the first annual accounting, Nicole and staff billed 8.7 hours (\$990.50).
- In PB2016-050160, Nicole and staff billed 9.0 hours (\$943.00) for accounting related tasks from March 16, 2017 through April 14, 2017.

In general, over many cases and in the respective accountings, the conservator's accounting errors included:

- Beginning balances not agreeing with ending balances;
- Inventory and appraisal balance issues;
- Incorrectly stated inventory amounts;
- Failure to file inventory;

- Ending balance on account not agreeing with corresponding balances on bank statements;
- Incorrect accounting periods noted;
- Failure to provide copies of financial account statements;
- Failure to provide financial reconciliations or incorrect reconciliations were provided;
- Financial accounts not shown in the ending inventory but statements supporting the existence of accounts were previously submitted.

In their December 29, 2017, written Response, the fiduciaries stated that they have “recently implemented changes to their billing system that will alleviate confusion and the need for “after the fact” credits on future billing statements. With Love implemented these changes prior to receipt of the Memorandum to improve the quality of services provided.”

Changes include:

1. A checks and balances system to ensure proper entries for tasks that may be assumed to be clerical in nature;
2. Weekly review of bills to mitigate issues which may have been the subject of concern in previous matters. The new system more easily permits “write offs” of all interoffice communication (excluding communication that is required for furtherance of work and benefit to the ward);
3. Alerts to notify With Love when the fiduciary fees are nearing the amount approved in the Budget, which will in turn provide With Love notice of the need to timely file an Amended Budget;
4. Upgraded ability to edit the invoices and time entered in each matter thereby reducing the need to issue credits when filing a Petition for Approval of Fiduciary Fees. The new system more easily permits edits/adjustments to hourly rates to ensure the authorized rate is commensurate with the task performed regardless of who performed the work.

The Division did not independently verify the new system described by the fiduciaries.

The Response also noted that, in response to the CARR’s regarding recommendation for disallowance of fees, the fiduciaries have provided voluntary credits/reduction of fiduciary fees in various cases:

- PB2014-071019
  - Reduction: \$5,213.45
- PB2015-070041

- Reduction: \$592.00
- PB2015-070951
  - Reduction: \$2,740.50
- PB2015-070937
  - Reduction: \$5,528.00
- PB2015-002195
  - Reduction: \$3,363.00
- PB2013-071060
  - Court ordered reduction: \$2,707.00

*Restricting or Denying Contact*

Fiduciaries are required to make all decisions in a manner that promotes the civil rights and liberties of the ward or protected person and maximizes independence and self-reliance as well as make decisions in accordance with the determined preferences of the ward or protected person. Fiduciaries are prohibited from removing the ward from the home or separating the ward from family and friends unless the removal is necessary to prevent substantial harm.

1) PB2017-050011

In Complaint numbers 17-0008/17-0009, involving probate case number, PB2017-050011, Complainant alleged, in part, that Jeannean and Nicole moved Janette (“Janette”) from a living arrangement of her choosing and placed her into a “locked down” memory care facility that she did not want to move in to and that was contrary to her needs and affordability. Complainant believed that the memory care unit was too restrictive and inappropriate because of Janette’s capacity. Complainant also alleged that the fiduciaries unreasonably restricted and/or denied contact and visitation with family and friends.

In addition to their Response to Complaint Numbers 17-0008/17-0009, the fiduciaries’ Response, dated December 29, 2017, involving the Director Initiated Complaint (17-0027/17-0028), stated that neither Jeannean nor Nicole placed any restrictions on visitors. The fiduciaries claimed that when a new resident moves into a care facility, the facility employs its own policy to restrict all visitors for the resident’s first two weeks to help the resident acclimate to his or her new environment. The fiduciaries noted that, in this matter, they asked that the memory care facility make a special exception to its policy and allow Janette’s out of state relatives to spend time with her during the first two weeks she was at the facility and the facility granted the fiduciaries’ request.

The Response further stated that after the two-week restriction period, memory care facility, Rock Creek Alzheimer's Special Care Center ("Rock Creek"), chose to restrict non-familial visitors after facility staff witnessed Janette becoming increasingly distressed and agitated following contact with the non-familial visitors. The Response included an affidavit from Rock Creek LPN, Kerry Robinson ("Robinson"). The fiduciaries wrote that Rock Creek's decision to limit access to Janette was based solely on her best interests and that those restrictions were intended to stabilize the protected person and were not an attempt to isolate Janette from family and friends.

The Affidavit of Kari Robinson LPN Rock Creek Special Care Center, dated July 21, 2017, stated, pertinently, that new residents are not allowed to have visitors during their first two (2) weeks at the facility to allow new residents to acclimate. Robinson wrote that during the initial two (2) week period, the fiduciaries visited the proposed ward and that Nicole requested that the facility deviate from normal procedure to allow visitors. A niece from out of state, Bonnie Lazzell ("Lazzell") visited during the restricted period and that after the initial two (2) week period family members visited and called Janette.

The Division notes that Robinson's last sentence, as it appears at the bottom of page one (1) of the two (2) page Affidavit, was incomplete. It read that Dennis Myers ("Myers") and his daughter, Denina Geistlinger ("Geistlinger") visited the person "who became noticeably..."

The Division further notes that Geistlinger was Complainant in 17-0008/17-0009.

Division staff reviewed Robinson's Affidavit, as noted above, and proceeded to interview her. Robinson told Division staff that decisions around visitation were made by the fiduciary adding, "Jeannean was her [Janette] decision-maker" and that the fiduciary's office would "type a memo" or send an email indicating who could or could not visit Janette. Robinson said, "we didn't have a say who got to...we would have, unfortunately, be the ones to have to enforce it." Regarding Rock Creek's rules or internal policies or procedures regarding visitation, Robinson said, "we have house rules but it's not those types of rules" adding that there are no rules restricting anyone's visits. Specific to the initial two (2) week restriction after admission to the facility, Robinson said, "Every case is kind of different. There's a lot in memory care in general, there's a lot of memory care communities that absolutely say no we don't want people visiting for two weeks. Rarely do we do that but once in a while, yeah, we do." Regarding Janette, Robinson said, "I did not put any restrictions on anybody" but verified that Myers and Geistlinger were on a "no contact" list.

Robinson asserted that visitation restrictions were determined by the fiduciary and communicated to Rock Creek by memo. Regarding visitation for anyone not on a restricted or no contact list, Robinson said if anyone arrived at Rock Creek wanting to visit and those individuals were not on a restricted or no contact list, Rock Creek staff would each respond differently but would likely call Jeannean out of courtesy to make sure it was okay and to "clear" the visit because Robinson said the fiduciary is the "primary point person for

everything.” Robinson thought that Janette spoke with family members by telephone in the evening and that only Myers and Geistlinger were the “ones to be kept away.”

The Division notes that the statements Robinson made to the Division, during her interview, are inconsistent with those statements of the referenced Affidavit.

In her interview with the Division, Lazzell told Division staff that after she learned what was happening with her aunt, Janette, Lazzell was so alarmed that she flew to Arizona from Illinois to help. Lazzell said she was in Arizona for nine (9) days. Lazzell expressed considerable concern over what she believed was overly aggressive, unethical, and unprofessional conduct by the fiduciary.

Pertinent to visitation, Lazzell said after an upsetting and distressing ordeal with Nicole, Lazzell helped calm her aunt and transported her to Rock Creek on or about April 19, 2017. During the admission to the facility, Lazzell said that the nurse told her that Rock Creek “preferred that no one visit for two (2) weeks” but said the facility would allow family to visit particularly because Lazzell traveled from out of state. Lazzell said the nurse told her they could visit daily if they wanted to but asked them not to stay “all day” because Janette needed to adjust to her new environment. Lazzell left her aunt overnight and the following day called Jeannean and asked to go to her aunt’s home to pick up some belongings that her aunt had requested. Lazzell said Jeannean would not allow Lazzell to be at the home and Jeannean would not agree to meet Lazzell at the house apparently because Jeannean would be the one to pick up what Janette needed.

The next day, Lazzell said she and her cousin, Laura Taylor (“Taylor”) returned to Rock Creek to visit Janette and said within 10 (ten) minutes of the visit, Rock Creek staff came to the room and asked them to leave the facility. Lazzell asked why they were not allowed to visit given what they had been told by nurse at the time of admission to which staff apparently replied, “because you’re not to be here...the power of attorney called and said that you had to leave.” Lazzell left but was not happy and said she told facility staff that she was going to call her attorney.

Lazzell said that in May 2017, several weeks after Janette was admitted into Rock Creek, Lazzell and Taylor visited her for about an hour. Lazzell knew that Geistlinger was denied entry into Rock Creek even though the initial two (2) week period had ended. She said Geistlinger had arrived at Rock Creek with clothing for Janette but Geistlinger was turned away by Rock Creek staff so Geistlinger called Lazzell because she was very upset. Lazzell then called Rock Creek and introduced herself to the nurse who apparently told her that Janette was “not allowed to take calls” and that no one was permitted to visit. Lazzell asked for an explanation for this and said she was told, “I’m sorry but she cannot take calls, the POA said she cannot take calls.” The following day Lazzell called Rock Creek and, apparently, spoke with her aunt.

In her interview, Taylor told the Division that Rock Creek staff informed her and Lazzell that there is normally a two (2) week adjustment period for new residents but because Lazzell was from out of state the facility would allow visits. Taylor said after their aunt

was admitted they went to visit her and had been in her room for several minutes when facility staff said they checked with the fiduciary who instructed staff to have Taylor and Lazzell leave the facility. Taylor said she also knew that Geistlinger tried to visit on two (2) occasions but was denied after Rock Creek checked with the fiduciary. Taylor said her aunt was not allowed to use a telephone and when she borrowed former neighbor, Marcia Lynk's ("Lynk") cell phone, facility staff would not permit Janette to use the phone.

Court-appointed counsel for Janette, Michael Strauber ("Strauber"), (PB2017-050011) told Division staff he went to see his client at Rock Creek and brought Geistlinger along with him. Facility staff would not permit Geistlinger until Strauber told Rock Creek staff that she was a friend of Janette's and was accompanying Strauber. He said Janette was "overjoyed" when she saw Geistlinger. Strauber said Janette was "just totally flummoxed" stating to him, "I don't know why I'm here...they put me in here, I don't want to be in here. I'm locked in, I can't talk to anybody, I can't have any visitors, nobody can see me." Strauber, on behalf of his client, objected to the fiduciary's petition for guardianship and conservatorship. Strauber said he arranged for a neuropsychologist who completed a neuropsychological evaluation on Janette and determined that she had capacity to revoke and sign new powers of attorney.

Strauber said after meeting seeing his client for the first time and realizing that she did not belong in a "locked down" memory facility he contacted the fiduciary's attorney, Gobbato, to resolve the matter. Strauber said that Gobbato indicated that when someone is placed into a facility like Rock Creek, the facility policy is to impose a two (2) week or ten (10) day restriction on visits to allow the individual time to acclimate.

Lynk told Division staff that she was Janette's neighbor for approximately 10 (ten) years but she did not know what had recently happened to her. Lynk went to Rock Creek to visit her husband who had been at Rock Creek for the last three (3) years and who she had been visiting five days per week. Lynk said she was "pretty shocked" to find that Janette had been placed at there because it was such a confined environment. Lynk said "for some reason" facility staff would not allow Janette's friend to visit. Lynk said she allowed Janette to use her cell phone to make a call but when Robinson saw this she called Lynk into her office and Lynk said she was "chastised for that." Apparently, Robinson told Lynk "you don't understand this but it's Court-ordered that she cannot, that she's not supposed to have any outside influence right now, they think she'll adjust better to life here if she doesn't." Lynk said this did not make any sense to her adding that during the three (3) years that her husband was moved into Rock Creek, there has never been any restrictions on her visitation.

Adult Protective Services ("APS") worker, Joanna Dockstader ("Dockstader") told Division staff that she visited Janette at Rock Creek on May 3, 2017. Dockstader spoke with Health Services Director, Robinson, who said that the Janette had "restricted visitation" until the forthcoming guardianship/conservatorship hearing (June 20, 2017). Dockstader said she understood that the restrictions applied to family and friends and that there was "no visitation, no phone calls, no letters."

In her interview with the Division, Jeannean stated that it is her decision to select licensed care facilities for wards. Prior to choosing a facility, she knows the rules, procedures and policies regarding contact and visitation with family and friends. When asked about facilities that limit or disallow contact with family and significant relations of residents, Jeannean said "none of them restrict long term...it is usually based case by case, individual, if the facility has asked for what they refer to the two-week transition period, very common, but it's usually their decision." Jeannean said she was not concerned about a two-week restriction and said she did not know of any memory care facility that does not apply that protocol. She said the contact restrictions protocol is based on the individual and is determined by the respective facility.

Asked who determines what is in the best interest of the ward, Jeannean said "the receiving facility" and when asked what her role was in determining what is in the best interest of the ward, in that context, she said, "My role is to rely on them, they are the experts at transitioning someone. I rely on them." Jeannean said she does not discuss the two (2) week period of restriction with the facilities and when asked if she has ever disagreed with a facility's decision regarding contact restrictions Jeannean said, "in 18 -20 years I have not." She said she has never overridden a facility's visitation protocol but knows she could do so as guardian. Jeannean said she has encouraged visits if someone is coming from out of town.

Jeannean was asked if she has, at any time, either within or outside of any two (2) week transition period, instructed or directed care facility staff, by any means of communication, to deny contact or place any person on a "do not contact" list, Jeannean said, "I did not, no." She said that after a two (2) week transition period, consideration is given to any significant behavioral issues, aggression, refusal to take medications, or if the individual exhibits exit-seeking behavior. In those circumstances, and if recommended by a physician, Jeannean said she would consider restrictions or eliminating visits.

Billing records for services rendered, in PB2017-050011, showed that on April 22, 2017 Jeannean received a call from Lazzell who was requesting that she go to her aunt's home to gather personal items. Lazzell also wanted to visit her aunt each day before returning to Illinois.

Jeannean wrote:

"I explained the normal protocol regarding visits in these cases...After some discussion I could understand she did not want....to feel they had abandoned her there. I agreed to have Nicole call the facility to authorize the visits but to also place a restriction on Dennis [Myers]. I asked Bonnie [Lazzell] to restrict her limit her visit to one hour as the staff is trying to encourage [proposed ward] to attend programming. Bonnie agreed. I notified Bonnie that Dennis will not be allowed to see [proposed ward] as he is the reason for all of this upset with [proposed ward] and the hostility we have felt from the family. Went into detail as to how many time [sic] we asked for family contact and how many times it fell on deaf ears..."



Jeannean's billing showed that she contacted Nicole and asked her to call Rock Creek to lift the visit restriction for Lazzell and to restrict Myers and Geistlinger "permanently." Records demonstrated that Nicole contacted Rock Creek to advise that Lazzell will be permitted to visit for one hour today.

On April 24, 2017, billing reflected, in part, that Nicole conferenced with attorney, Gobbato, "about the no visit requirements at Rock Creek for the transitional period..." and discussed how to best proceed with being respectful to visiting out of town family. On the same date, Jeannean updated a WLJ employee regarding the family visits that were authorized by Nicole and the "complete restriction of Dennis Myers and his daughter and from her visiting or calling by telephone." Billing showed discussion with Nicole who had spoken with Gobbato and that he agreed that the fiduciaries "should honor the protocol of Rock Creek to restrict visits for two weeks upon admission of new resident to their facility." On April 24, 2017, WLJ staff member "MG" called Rock Creek "to fax over restriction list."

On April 26, 2017, billing showed that Jeannean received a call from Cindy at Rock Creek who reported that Lazzell and Taylor arrived to visit Janette and that Cindy did not realize who they were until they passed through the doors. In billing records, Jeannean wrote she "Requested that Cindy ask them to leave per Nicole's request and Rock Creek protocol for new residents." Jeannean billed to draft and send a message to Nicole asking her to "call Rock Creek to ask that Bonnie and Laura leave, as there is still a transition time for [proposed ward]." Nicole followed up with Cindy who reported that Lazzell left unhappy at being asked to leave and that she would be notifying her attorney.

On May 4, 2017, Jeannean's billing entry reflected that Nicole "will be sending a revised visit and call restriction list to the facility, as the family will be allowed to visit beginning May 7."

The Division notes that, in this matter, Nicole was the named successor agent under Powers of Attorney, effective April 17, 2017.

## 2) PB2015-070041

In this matter, Nicole was appointed conservator on March 23, 2015 and guardian on October 12, 2015. Sheila C. ("Sheila"), the ward's daughter, said she brought the fiduciaries in to assist her mother, Anna ("Anna") because she was being "scammed" by dubious people and had incurred debt as a result. Sheila said she went to MRB to inquire about a fiduciary and MRB attorney, Mushkatel, recommended Nicole who was working out of his office.

Sheila expressed concern for how Jeannean and Nicole began to disempower her shortly after beginning their involvement. For example, Sheila said she alerted Nicole that Anna had veterans' benefits because she had a husband who was a veteran therefore Anna could obtain her medications at no cost if the medication was picked up at Luke Air Force Base. Sheila said she told Nicole that she would be happy to pick up the prescription medication

from the air force base and deliver them to Nicole if the fiduciary called in the prescription. Sheila said Jeannean remarked, "Nope, you can't be involved at all" and the fiduciaries would not allow Sheila to participate apparently because Sheila "did not have a grip" on the situation so she was not to be involved. Although Anna would have saved the cost of medication by picking them up at the air force base, she said that Nicole never used this service.

According to Sheila, in consultation with the fiduciaries, she agreed to move her mother from her own home where she lived alone into an independent living situation. Sheila claimed that over time the fiduciaries continued to move Anna into increasingly restrictive environments from independent living to assisted living and finally into a "locked down" memory care facility. Each location was further away from Sheila leading her to believe the fiduciaries did not want Anna to "have much of a relationship with people" and moved her "as far away to get her away from us." Sheila said her mother has an independent streak and asserted that independence by leaving her independent living or assisted living facilities and go shopping, attended church, or had medical procedures done without first seeking Nicole's permission.

Sheila said the independent living facility also had assisted living arrangements and instead of the fiduciaries transitioning Anna to assisted living in the same facility the fiduciaries insisted that she moved into another facility further away from Sheila. She said she asked the fiduciary not to "dump her there and not be a participant" in the decision to move her because Sheila knew her mother did not want to move. After Anna went into the facility, Sheila said Nicole told her that she was not allowed visit her mother for about three (3) weeks until she settled into her new environment. Sheila said she was not permitted to take her mother to church nor were any of Anna's friends allowed to take her to church. Sheila said she talked to the fiduciaries about this they said it was until Anna gets settled but Sheila replied, "Oh, you mean until she starts conforming" to which, apparently, Jeannean said, "you could put it that way." After the three (3) week restriction on visitation, Sheila was able to see her mother and said she visited her "a lot" including having dinner with her once per week. Sheila said the fiduciaries controlled how long she could visit and told her "one or two hours a week, that's all you need with your mom."

After three (3) months in assisted living, Sheila said her mother was moved into a "locked down" memory facility and the fiduciaries placed restrictions on visitation. Sheila could not recall how long she was told to wait before visiting but said she called the fiduciaries weekly about when she would visit and would be told "not yet" because Anna needed to settle into her new environment. Sheila said staff at the facility told her that her mother did not belong there. Sheila said her mother told her she felt like she was being treated like a criminal.

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#### **ANALYSIS OF ALLEGATIONS:**

*Allegation 1: Jeannean and Nicole engaged in self-dealing and/or the appearance of self-dealing and conflict of interest impropriety and/or the appearance of conflict of interest and impropriety.*

*ACJA §§ 7-201(F)(1) and 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained in § 7-202(J).*

*ACJA §7-201(H)(6)(a), (g), (h), (j) and (k)(6), (7) and (8):*

*6. Grounds for Discipline. A certificate holder is subject to disciplinary action if the board finds the certificate holder has engaged in one or more of the following:*

*a) Failed to perform any duty to discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, this section or the applicable section of the ACJA;*

*g. Exhibited gross negligence;*

*h. Exhibited incompetence in the performance of duties;*

*j. The existence of any cause for which original certification or renewal of certification could have been denied pursuant to subsections (E)(2)(c) or (G)(4)(c) and the applicable section of the ACJA;*

*k. Engaged in unprofessional conduct, including:*

*(6) Failed to practice competently by use of unsafe or unacceptable practices;*

*(7) Failed during the performance of any responsibility or duty of the profession or occupation to use the degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent professional certificate holder engaged in similar practice under the same or similar conditions regardless of any level of harm or injury to the client or customer;*

*(8) Failed to practice competently by reason of any cause on a single occasion or on multiple occasions by performing unsafe or unacceptable client or customer care or failed to conform to the essential standards of acceptable and prevailing practice;*

*ACJA §7-201(E)(2)(c)(2)(b)(iii):*

*(2) The board may deny certification of any applicant if one or more of the following is found:*

*(b) The applicant or an officer, director, partner, member, trustee, or manager of the applicant:*

*(iii) Has conduct showing the applicant or an officer, director, partner, member, trustee, or manager of the applicant is incompetent or a source of injury and loss to the public;*

ACJA §7-201(G)(4)(c):

*4. Decision Regarding Renewal.*

*c. The board may deny renewal of certification for any of the reasons stated in subsection (E)(2)(c).*

ACJA §7-202(J)(2)(a), and (b)(1), (2) and (3)(a):

*2. Relationship with the Ward or Protected Person. The fiduciary shall exhibit the highest degree of trust, loyalty, and fidelity in relation to the ward, protected person, or estate.*

*a. The fiduciary shall manage and protect the personal and monetary interests of the ward or protected person and foster growth, independence and self reliance to the maximum degree.*

*b. The fiduciary shall:*

*(1) Avoid self-dealing, conflict of interest impropriety, or the appearance of a conflict of interest or impropriety. Self-dealing, a conflict of interest, or impropriety arises where the fiduciary has some personal or agency interest other individuals may perceive as self-serving or adverse to the position or best interest of the ward, protected person, or decedent [emphasis added]. A conflict of interest may also arise if the fiduciary has dual or multiple relationships with a ward that conflict with each other or has a conflict between or among the best interests of two or more wards.*

*(2) Maintain independence from all service providers to enable the fiduciary to coordinate services, challenge inappropriate or poorly delivered services, and act in the best interests of the ward or protected person.*

*(3) Unless otherwise authorized by the court, the fiduciary shall not:*

*(a) Provide non-fiduciary services to the ward or protected person if the fiduciary or a person or entity closely related to the fiduciary has a personal or financial interest. For the purposes of this subsection, "closely related" includes a spouse, child, parent, sibling, grandparent, aunt, uncle, or cousin of the fiduciary, and any business, partnership, corporation, limited liability company, trust, or other entity that the fiduciary or a closely related person has a financial interest in, is employed by, or receives compensation or financial benefit from.*

The preamble of the Arizona Rules of Probate Procedure states, "The appointment of a guardian or conservator intrudes on the ward's or protected person's liberty to make and carry out decisions regarding matters that may be of a very personal nature. The appointment of a guardian or conservator places the guardian or conservator in a position

of trust and confidence with respect to the ward or protected person and imposes on the guardian or conservator the highest duty to act for the benefit of the ward or protected person.” §7-202(J)(2) requires that “The fiduciary shall exhibit the highest degree of trust, loyalty, and fidelity in relation to the ward, protected person, or estate.”

Licensed fiduciaries are bound by duties of care and loyalty and those core duties require additional measures of good faith and integrity. The highest ethical standards of practice must be applied because fiduciaries exercise extensive control and authority over incapacitated people, who are incapable of making decisions for themselves, and vulnerable people who are unable to defend or protect themselves from abuse, neglect and exploitation. This requires fiduciaries, as decision-makers, to act for the benefit of the protected person and fiduciaries must act without personal economic conflict. The duty of loyalty is imposed on fiduciaries to ensure fairness in transactions in which the fiduciary has personal or organizational interests and who profits from those decisions the fiduciary makes on behalf of the protected person. Therefore, the fiduciary’s loyalty cannot be divided or conflicted. In addition, it is important to consider that conflicts of interest can compromise professional responsibilities because conflicts of interest interfere with benchmark professional standards of independence, objectivity and judgement.

Evidence presented in the Summary of Factual Findings of Investigation demonstrates that Jeannean and Nicole violated their fiduciary obligations to exhibit the highest degree of loyalty in relation to the ward and/or protected person, as required by ACJA §7-202(J)(2). The fiduciaries engaged in a pattern of unsafe and unacceptable practice and failed to use the degree of care, skill and proficiency commonly exercised by ordinary skillful, careful and prudent professional fiduciaries engaged in similar practice under similar conditions, as mandated by ACJA §7-201(H)(6)(k)(7) and (8).

Self-dealing and/or the appearance of self-dealing, self-interest and/or the appearance of self-interest and conflict of interest and/or the appearance of conflict of interest impropriety influenced the fiduciaries’ practice. Further, the pattern of practice, detailed herein, advanced the fiduciaries’ personal and financial interests but it is practice that should be considered injurious to wards, protected persons and the public.

The following provides a highlight of Jeannean’s and Nicole’s respective involvement and bears out the self-dealing, appearance of self-dealing, conflict of interest impropriety and appearance of conflict of interest impropriety:

*a) Jeannean*

Per the information presented in the Summary of Factual Findings of Investigation:

- Jeannean, along with her daughter, Nicole, is a co-owner of WLJ. Jeannean holds at least a 33.3% business interest in the company. Jeannean and Nicole’s interest combines for 66.6% interest in WLJ.

- In probate cases reviewed, Jeannean was Court-appointed guardian except in PB2015-070041 in which Nicole was appointed guardian and conservator, and in PB2013-070160 where Jeannean was appointed both guardian and conservator. In probate cases where Jeannean was the Court-appointed guardian, at the same time, she engaged her business, WLJ, to provide non-fiduciary services to wards and she directly provided non-fiduciary services to wards.

Non-fiduciary services included geriatric care management and nursing services provided to wards by WLJ's LPN.

- Jeannean told Division staff that, as the guardian, she makes the decision to provide geriatric care management and nursing services and as to who provides those services. She said she determines the scope, extent and level of involvement for those services.
- Jeannean told Division staff that there are no limits to her involvement as geriatric care manager' and the LPN's involvement in any given case because intervention is determined by need and that, as guardian, Jeannean determines the need.
- Jeannean and Nicole told Division staff that WLJ provides geriatric care manager and nursing services to all wards even if those wards are placed in licensed care facilities including assisted living, group homes, and memory care units that employ nurses or case workers and that provide in-house nursing and/or other similar medical care and/or case management service i.e. social workers.
- Nicole told Division staff that she discusses, with Jeannean, the costs of Jeannean providing geriatric care management services prior to her serving in that capacity. Nicole said they also discuss the protected person's assets and resources and said those factors determine the level of care, who they use and how the fiduciaries implement those services.

Jeannean and Nicole told Division staff that Jeannean bills the same hourly rate for her services as geriatric care manager and as fiduciary. Fiduciary records showed that Jeannean generally billed wards/protected persons \$105.00 to \$115.00 per hour for her involvement regardless of her role and function.

- Jeannean told Division staff that most of her fees and costs billed to wards were generated from the geriatric care management involvement.
- Jeannean and Nicole told Division staff that WLJ pays the LPN an hourly rate of \$24.00. Fiduciary billing records demonstrated that WLJ generally billed wards/protected persons from \$105.00 to \$115.00 per hour for the LPN's nursing services.

Per the Summary of Factual Findings of Investigation, WLJ raised the LPN's hourly rate from \$105.00 to \$115.00. Further, WLJ's LPN rates equaled the full fiduciary rate and the geriatric care manager rates.

- Fiduciary billing from WLJ demonstrated that Jeannean and WLJ billed for and collected thousands of dollars from wards for providing non-fiduciary services despite the evident conflict of interest.
- The Court, via CARRs, alerted the fiduciaries of the Court's concerns regarding excessive visits to wards/protected persons by the fiduciary and her staff, yet Jeannean continued in her established pattern of practice of exceeding the allotted number of visits:
  - CARR April 3, 2015: PB2013-071060
  - CARR November 7, 2016 and September 27, 2017: PB2015-002195
  - CARR October 11, 2017: PB2015-070951
  - CARR February 13, 2018: PB2016-071488
  - Minute Entry (Hon. J. Justin McGuire): PB2013-071060  
(November 1, 2016)

The above-noted probate cases and subsequent CARRs do not represent a complete list of probate cases involving Jeannean and Nicole, either open or administratively closed.

Jeannean was in a conflict of interest and/or the appearance of a conflict of interest when she allowed the law firm, MRB, to represent her as the fiduciary/guardian, doing business as WLJ, because her daughter/business partner, Nicole, is and, has been since 2012, in a contract employment relationship with MRB. As stated in the Summary of Factual Findings of Investigation, Nicole told Division staff she works as a licensed fiduciary with the firm typically five days per week, Monday to Friday from 8:00AM to 12:00PM and she is paid to provide support to MRB attorneys and clients seeking to be appointed fiduciaries. Nicole said she assists "lay fiduciaries...through the process" and by explaining the "guidelines" and "completing" the role of fiduciary.

By involving MRB, Jeannean is retaining the law firm which, under a contract type of employment arrangement, pays her business partner, Nicole, to provide fiduciary services to MRB and its clients.

Referenced in the Summary of Factual Findings of Investigation, MRB represented Jeannean as fiduciary/guardian, doing business as WLJ, in the following probate cases:

- PB2013-071060
- PB2014-071019
- PB2015-002195
- PB2015-070951
- PB2016-071488
- PB2017-050011

The afore-mentioned cases may not represent an exhaustive list of all probate cases involving Jeannean and MRB as counsel for her as fiduciary/guardian.

On the application to be a licensed fiduciary, executed by Jeannean on April 22, 2008, and in a series of renewal applications, each required Jeannean to represent that she agreed to abide by or had read and reviewed ACJA §§7-201 and 7-202, applicable to licensed fiduciaries.

The pertinent section reads [emphasis added]:

*I have received a copy of the Arizona Code of Judicial Administration ("ACJA") and I agree to abide by ACJA §§7-201: General Requirements and 7-202: Fiduciaries.*

As Court-appointed fiduciary/guardian and decision-maker for incapacitated persons, Jeannean utilized WLJ, in which she retains a 33.3% financial interest, to provide non-fiduciary services to wards even when those services appear to be unnecessary and/or redundant because wards resided in licensed care facilities such as assisted living and memory care units which had in-house nursing and other medical staff. In providing non-fiduciary services and using her own business in which she retains a personal and financial interest to provide non-fiduciary services, Jeannean failed to avoid self-dealing, the appearance of self-dealing, conflict of interest impropriety and the appearance of conflict of interest as she is required to do per the provisions set forth in ACJA §7-202(J)(2)(b)(1), (2), and (3)(a).

In addition, because the guardian *is* also the service provider, it is unviable for Jeannean to remain in compliance with the provisions of ACJA §7-202(J)(2)(b)(2):

*(2) Maintain independence from all service providers to enable the fiduciary to coordinate services, challenge inappropriate or poorly delivered services, and act in the best interests of the ward or protected person.*

Jeannean's recurrent conduct does not conform to essential standards of safe and acceptable fiduciary practice. Despite having been repeatedly alerted by the Court as to its concerns with inappropriate, unreasonable or billing practice that was not compliant with ACJA §3-303 regarding excessive and unnecessary visits to wards, Jeannean continued with this practice. In doing so, she demonstrated gross negligence, incompetence or a sheer willingness to ignore Court staff's stated concerns. Instead of attuning her practice to ensure compliance with ACJA §3-303 and meaningfully addressing Court staff's concerns, Jeannean chose to function under the pretext of providing geriatric care management services despite evident self-dealing and conflict of interest issues and, in doing so, she enriched herself and business partner, Nicole.

The ACJA §7-202(F)(10) requires any fiduciary to notify division staff if the fiduciary has knowledge that another licensed fiduciary has committed misconduct raising substantial



question as to the fiduciary's honesty, trustworthiness, or qualifications as a licensed fiduciary. The Division has no record of Jeannean contacting the Division regarding any such concerns for Nicole.

Allegation 1 is substantiated involving a) Jeannean.

*b) Nicole*

All the ACJA provisions cited at the beginning of Allegation 1 involving Jeannean apply to Nicole.

Per the information presented in the Summary of Factual Findings of Investigation:

- Nicole, along with her mother, Jeannean, is a co-owner of WLJ. According to ACC records, referenced in the Summary of Factual Findings of Investigation, Nicole retains at least a 33.3% business and financial interest in the company. Nicole and Jeannean's combined interest in WLJ is 66.6%.
- In probate cases reviewed, Nicole was Court-appointed conservator, except in PB2015-070041 where she was appointed guardian and conservator, PB2013-070160 where Jeannean was appointed guardian and conservator, and PB1989-070016 where Jeannean was appointed guardian. In probate cases where Nicole was the Court-appointed conservator, she approved costs related to the provision of non-fiduciary services by WLJ, described in the Summary of Factual Findings of Investigation, in which she retains a 33.3% financial interest.
- Nicole told Division staff that she discusses, with Jeannean, the costs of Jeannean providing geriatric care management services prior to her serving in that role and they discuss the protected person's assets and resources and those factors determine the level of care, who they use and how the fiduciaries implement those services.
- Nicole told Division staff that it is Jeannean's decision, as guardian, to determine whether geriatric care management and/or nursing services are provided to wards and that Nicole does not get involved in the guardian's decision to provide those services.
- Nicole told Division staff that WLJ provides geriatric care management and nursing services to all wards including those residing in licensed care facilities such as assisted living, group homes, and memory care units even if those care facilities have nursing and other medical staff or some type of case manager.
- Nicole told Division staff that she does not question Jeannean regarding the scope of work, extent and level of involvement as geriatric care manager nor of the use of WLJ's nurse to provide nursing services to wards.

- Nicole told Division staff that when reviewing billing and fees, she does not review Jeannean's guardian billing for "substantive information" and said she only reviews for accuracy, errors, block billing, duplicative charges and to ensure that rates are commensurate with tasks performed.
- Nicole told Division staff that she cannot differentiate the guardian's tasks from those of the geriatric care manager but said Jeannean bills the same rate for both. Fiduciary records showed that Jeannean generally billed wards/protected persons \$105.00 to \$115.00 per hour for her involvement regardless of her function.
- Nicole told Division staff that she views geriatric care management as separate from the guardian's services. She said the day to day care management of a ward is the responsibility of a care manager to ensure that the ward's needs are met and that the day to day care is not the guardian's responsibility because the Court only allows the guardian to visit a ward once per month but that once per month does not ensure that the ward's needs are being met.
- Nicole and Jeannean told Division staff that WLJ pays the LPN an hourly rate of \$24.00.

Fiduciary billing records demonstrated that WLJ generally billed wards/protected persons from \$105.00 to \$115.00 per hour for the LPN's nursing services.

Per the Summary of Factual Findings of Investigation, WLJ raised the LPN's hourly rate from \$105.00 to \$115.00. Further, WLJ's LPN rates equaled the full fiduciary rate and the geriatric care manager rates.

Fiduciary billing records demonstrated that Nicole authorized the payment of nursing services as provided by Jeannean.

- Fiduciary billing records demonstrated that Nicole authorized the payment of geriatric care services provided by her mother, Jeannean, which were generally billed at \$105.00 and \$115.00 per hour.
- Fiduciary billing records showed that Nicole, Jeannean, and WLJ billed for and collected thousands of dollars from wards for the provision of non-fiduciary services despite the conflict of interest.
- The Court, via CARRs, alerted the fiduciaries of the Court's concerns regarding excessive visits to wards/protected persons by the fiduciary and her staff, yet Nicole, as conservator, continued to approve Jeannean's fees and expenses:

- CARR April 3, 2015: PB2013-071060
- CARR November 7, 2016 and September 27, 2017: PB2015-002195
- CARR October 11, 2017: PB2015-070951
- CARR February 13, 2018: PB2016-071488

- Minute Entry (Hon. J. Justin McGuire):  
(November 1, 2016)

PB2013-071060

The above-noted probate cases and subsequent CARRs do not represent a complete list of probate cases involving Jeannean and Nicole, either open or administratively closed.

In addition, Nicole was in a conflict of interest and/or the appearance of a conflict of interest when she allowed the law firm, MRB, to represent her as the fiduciary/conservator, doing business as WLJ; and/or doing business as Nicole. L. Sabatina, LLC, when Nicole is, and has been since 2012, in a contract employment relationship with MRB and is paid to provide fiduciary services to MRB.

As stated in the Summary of Factual Findings of Investigation, Nicole told Division staff she works as a licensed fiduciary with the firm typically five days per week, Monday to Friday from 8:00AM to 12:00PM and she is paid to provide support to MRB attorneys and clients seeking to be appointed fiduciaries. Nicole said she assists “lay fiduciaries...through the process” and by explaining the “guidelines” and “completing” the role of fiduciary. In doing so, Nicole is retaining MRB which, under a contract employment type of arrangement, pays her to provide fiduciary services to the firm and its clients.

Referenced in the Summary of Factual Findings of Investigation, MRB presented Nicole as fiduciary/conservator, doing business as WLJ, in the following probate cases:

- PB2014-071019
- PB2015-002195 (doing business as Nicole L. Sabatina, LLC)
- PB2015-070041 (doing business as Nicole L. Sabatina, LLC)
- PB2015-070951 (doing business as Nicole L. Sabatina, LLC)
- PB2016-071488
- PB2017-050011

The afore-mentioned cases may not represent an exhaustive list of probate cases involving Nicole retaining MRB as counsel for the conservatorship.

On the application to be a licensed fiduciary, executed by Nicole on March 9, 2012, and in a series of renewal applications, each required Nicole to represent that she agreed to abide by or had read and reviewed ACJA §§7-201 and 7-202, applicable to licensed fiduciaries.

The pertinent section reads [emphasis added]:

*I have read and reviewed Arizona Supreme Court Code of Judicial Administration §§7-201 and 7-202, governing fiduciaries, as adopted by the Arizona Supreme Court, and I agree to abide by the Arizona Code of Judicial Administration and*

*Code of Conduct for fiduciaries found in the Arizona Code of Judicial Administration §7-202(J) as promulgated by the Arizona Supreme Court.*

As Court-appointed conservator for protected persons and put into a position of trust and confidence, Nicole has fiduciary duty to protected persons and has a primary responsibility to manage the protected person's monies and ensure that all costs incurred and approved on behalf of protected persons are reasonable and necessary.

Nicole failed to avoid self-dealing, the appearance of self-dealing, conflict of interest impropriety and the appearance of a conflict of interest. Although Nicole has an obligation to ensure that all costs incurred are reasonable and necessarily incurred, she approved fees and costs provided by Jeannean and WLJ which included Jeannean directly provide non-fiduciary services to wards and protected persons, in violation of the self-dealing and conflict of interest provisions set forth in ACJA §7-202(J)(2)(b)(1) [emphasis added]:

*(1) Avoid self-dealing, conflict of interest impropriety, or the appearance of a conflict of interest or impropriety. Self-dealing, a conflict of interest, or impropriety arises where the fiduciary has some personal or agency interest other individuals may perceive as self-serving or adverse to the position or best interest of the ward, protected person, or decedent [emphasis added]. A conflict of interest may also arise if the fiduciary has dual or multiple relationships with a ward that conflict with each other or has a conflict between or among the best interests of two or more wards.*

Further, Nicole failed to comply with the provisions of ACJA §7-202(J)(2)(b)(2) [emphasis added]:

*(2) Maintain independence from all service providers to enable the fiduciary to coordinate services, challenge inappropriate or poorly delivered services, and act in the best interests of the ward or protected person.*

As referenced in the Summary of Factual Findings of Investigation, Nicole stated that she does not question Jeannean about the decision to be the service provider and provide non-fiduciary services to wards which included geriatric care management services provided directly by Jeannean; and nursing services provided by WLJ's LPN. Notwithstanding self-dealing, the appearance of self-dealing, conflict of interest and the appearance of conflict of interest, Nicole approved those non-fiduciary fees and costs even when protected persons were placed into licensed care facilities and memory care units with existing nursing oversight and/or other medical or social work staff.

Further, Nicole conceded that when she reviews Jeannean's billings, Nicole does not review for "substantive information" and said she only checks for accuracy, typographical errors, block billing, clerical and that rates charged are commensurate with tasks performed. Nicole said that she did not question Jeannean regarding the scope, extent and level of involvement as geriatric care provider nor of her use of WLJ's LPN.

Subsequently, Nicole did not maintain independence from Jeannean that would enable the conservator to act in the best interest of incapacitated and judicially protected persons, as required by ACJA §7-202(J)(2)(b)(2). By failing to avoid self-dealing, the appearance of self-dealing, conflict of interest and the appearance of a conflict of interest, Nicole breached her duty of loyalty to protected persons and she benefitted financially from those decisions she made as the conservator because she holds a 33.3% interest in WLJ, as does Jeannean. In doing so, Nicole placed personal and business interests above the interest of her clients and contrary to her ethical responsibilities, per ACJA §7-202(J)(2)(b)(1), (2), and (3)(a).

The ACJA §7-202(F)(10) requires any fiduciary to notify division staff if the fiduciary has knowledge that another licensed fiduciary has committed misconduct raising substantial question as to the fiduciary's honesty, trustworthiness, or qualifications as a licensed fiduciary, the Division has no record of Nicole contacting the Division regarding any such concerns for Jeannean.

Allegation 1 is substantiated involving b) Nicole.

***Allegation 2: Jeannean and Nicole filed misleading or false Estate Budgets with the Court.***

*ACJA §§ 7-201(F)(1) and 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained in § 7-202(J).*

*ACJA §7-201(H)(6)(a), (g), (h), and (k)(6), (7) and (8):*

*6. Grounds for Discipline. A certificate holder is subject to disciplinary action if the board finds the certificate holder has engaged in one or more of the following:*

*a. Failed to perform any duty to discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, this section or the applicable section of the ACJA;*

*g. Exhibited gross negligence;*

*h. Exhibited incompetence in the performance of duties;*

*k. Engaged in unprofessional conduct, including:*

*(6) Failed to practice competently by use of unsafe or unacceptable practices;*

*(7) Failed during the performance of any responsibility or duty of the profession or occupation to use the degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent professional certificate holder engaged in similar practice under the same or similar conditions regardless of any level of harm or injury to the client or customer;*

*(8) Failed to practice competently by reason of any cause on a single occasion or on multiple occasions by performing unsafe or unacceptable client or customer care or failed to conform to the essential standards of acceptable and prevailing practice;*

*ACJA §7-202(J)(1)(a) and (c)(2) and (3):*

*1. Duty to the Court.*

*a. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders, and the Arizona Code of Judicial Administration.*

*c. The fiduciary shall:*

*(2) Provide or ensure that reports, notices, financial accounts, and other documents are timely, complete, accurate, understandable, in a form acceptable to the court, consistent with the requirements specified in Arizona law, court rule, and the applicable sections of the Arizona Code of Judicial Administration;*

*(3) Not knowingly file any document with the court or present testimony to the court that is misleading, inaccurate, or false, or that contains misstatements, misrepresentations, or omissions of material facts;*

***a) Jeannean***

Per the information presented in the Summary of Factual Findings of Investigation:

- Jeannean told Division staff that she meets with Nicole to prepare Estate budgets.
- Jeannean told Division staff that in preparing Estate budgets and projecting costs she includes the ward's medical and personal needs "barring any unforeseen circumstances..."
- Jeannean told Division staff that she includes, in Estate budget projections, her fiduciary fees and costs and WLJ's geriatric care manager services and LPN's nursing services.
- Jeannean told Division staff that she includes, in Estate budget projections, those fiduciary fees and costs, geriatric care manager fees and costs and nursing fees and costs that were incurred at the time of WLJ's initial involvement with any person and fees and costs that were incurred prior to Jeannean being Court-appointed as guardian and/or conservator.

- Jeannean told Division staff that she and Nicole audit and review, monthly, costs and expenses to the ward which includes a review of their fiduciary fees and costs. Jeannean and Nicole said that since approximately eight (8) months ago, they started reviewing the same information twice per month rather than monthly.
- Nicole told Division staff that she and Jeannean audit and review, monthly, the costs and expenses to the protected person including a review of their fiduciary fees and costs. Since approximately eight (8) months ago, they started reviewing the same information twice per month.
- Nicole told Division staff that she knows she is required to file initial Estate budgets within 90 (ninety) days of being appointed conservator by the Court. She said, “we do our very best to forecast their expenditures, some of which is known, some of which is unknown, but we do our best to forecast those to provide a sustainability study...”
- Nicole told Division staff that in preparing Estate budgets, Jeannean is involved in the preparation process and that Jeannean provides Nicole the estimation of costs associated with ward’s care and whether those costs will be constant throughout the first accounting period. Nicole said that Jeannean obtains an estimate of any extraordinary costs so that those are included in the budget.
- Nicole told Division staff that she and Jeannean gather “all the information we possibly can to get that initial budget as accurate as we can...we do our best using the information we are aware of at the time.”
- Nicole told Division staff that although Jeannean does not provide her a specific written proposal or estimate, Jeannean’s projected expenditures are “based on the needs of the person, how much involvement we will have and so we estimate what that will look like from a budget perspective.”
- Nicole told Division staff that Jeannean’s expenditure estimates include food, clothing and shelter and upcoming medical treatments. They include all outstanding costs incurred such as air conditioning or home repairs, legal bills etc. if those costs were incurred prior to the fiduciaries’ being appointed by the Court.
- Nicole told Division staff that in preparing Estate budgets, spending projections include fiduciary fees and costs that were incurred from the time of their initial involvement before they are appointed guardian and conservator by the Court.

As noted in the Summary of Factual Findings of Investigation, the Division reviewed the Court’s audio recording involving PB2015-070951 during a hearing on October 16, 2017.

At that hearing, Nicole addressed the Court stating, pertinently [emphasis added]:

*“...when I’m doing the sustainability study I rely heavily on what the guardian determines as upcoming expenses for the ward...I do rely heavily on what the ward’s needs are in order to project the sustainability and to forecast the solvency of their estates.”*

Jeannean actively participates, with Nicole, in the preparation of initial Estate budgets and Jeannean provides the conservator an estimation of all costs to wards including projections of her fiduciary fees and costs, geriatric care manager fees and costs and nursing fees and costs.

Pursuant to ACJA §7-202(J)(1)(a) and (c)(2) and (3), Jeannean has a duty to the Court and is mandated to perform all duties and discharge all obligations in accordance with applicable law, orders and rules and the ACJA. In addition, she is required to provide or ensure that reports, financial accounts, and other documents are complete, accurate, and consistent with the requirements specified in law, court rule, and applicable sections of the ACJA.

Moreover, Jeannean is prohibited from knowingly filing any document with the Court that is “misleading, inaccurate, or false, or that contains misstatements, misrepresentations, or omissions of material facts,” per ACJA §7-202(J)(1)(c)(3). Although the initial Estate budget, is the conservator’s budget, Jeannean, as guardian, is required to ensure that all information she provides to the conservator is accurate and not misleading, false, or that contains misrepresentations or omissions of material facts.

As detailed in the Summary of Factual Findings of Investigation involving:

- PB2015-070951
- PB2015-002195
- PB2015-070937
- PB2015-070041
- PB2016-080151
- PB2016-050160
- PB2016-070706
- PB2016-050366
- PB2016-050493
- PB2013-070160

The projected fiduciary fees and expenses in the above-referenced cases, as those fees and costs appeared in the initial Estate budgets, were understated by the fiduciaries.

Additional detail on projections of fees and expenses and when those projections were reached or exceeded is provided in the Summary of Factual Findings of Investigation.

As noted in the Summary of Factual Findings of Investigation, fiduciary billing records demonstrated that Jeannean and Nicole, issued checks to themselves prior to filing initial Estate budgets. Therefore, certain fiduciary fees and costs had already been paid or incurred



by the Estate by the time the fiduciaries prepared and filed initial Estate budgets with the Court so Jeannean should and ought to have known that the budget projections filed with the Court, pertinent to fiduciary fees and costs, omitted material facts including what the fiduciaries had already paid or incurred at the time of filing the budget and those projections, as filed with the Court, subsequently misrepresented the fiduciary fees and costs for the forthcoming year.

The judicially approved projected fiduciary fees and costs for the year were reached and realized within days or weeks of filing the Estate budgets.

On the application to be a licensed fiduciary, executed by Jeannean on April 22, 2008, and in a series of renewal applications, each required Jeannean to represent that she agreed to abide by or had read and reviewed ACJA §§7-201 and 7-202, applicable to licensed fiduciaries.

The ACJA §7-202(F)(10) requires any fiduciary to notify division staff if the fiduciary has knowledge that another licensed fiduciary has committed misconduct raising substantial question as to the fiduciary's honesty, trustworthiness, or qualifications as a licensed fiduciary, the Division has no record of Jeannean contacting the Division regarding any such concerns for Nicole.

Allegation 2 is substantiated involving a) Jeannean.

*b) Nicole*

All the ACJA provisions cited at the beginning of Allegation 2 involving Jeannean apply to Nicole.

Per the information presented in the Summary of Factual Findings of Investigation:

- Nicole told Division staff that she and Jeannean audit and review, monthly, the costs and expenses to the protected person including a review of fiduciary fees and costs. Since approximately eight (8) months ago, they are reviewing the same information twice per month.
- Nicole told Division staff that she knows she is required to file initial Estate budgets within 90 (ninety) days of being appointed by the Court. She said, "we do our very best to forecast their expenditures, some of which is known, some of which is unknown, but we do our best to forecast those to provide a sustainability study..."
- Nicole told Division staff that in preparing Estate budgets, Jeannean is involved in the process and she provides Nicole the costs associated with ward's care and whether costs will be constant throughout the first accounting period. Nicole said that Jeannean obtains an estimate of any extraordinary costs so that those costs can be included in the budget.

- Nicole told Division staff that she and Jeannean gather “all the information we possibly can to get that initial budget as accurate as we can...we do our best using the information we are aware of at the time.”
- Nicole told Division staff that although Jeannean does not provide a specific written proposal or estimate, Jeannean’s projected expenditures are “based on the needs of the person, how much involvement we will have and so we estimate what that will look like from a budget perspective.”
- Nicole told Division staff that Jeannean’s expenditure estimates include food, clothing and shelter and upcoming medical treatments. They include all outstanding costs incurred such as air condition or home repairs, legal bills etc. if those costs were incurred prior to the fiduciaries’ being appointed by the Court.
- Nicole told Division staff that in preparing Estate budgets, projections include fiduciary fees and costs incurred from the time if their initial involvement before they are appointed guardian and conservator by the Court.

As detailed in the Summary of Factual Findings of Investigation, the Division reviewed the audio recording involving PB2015-070951 from a hearing on October 16, 2017. At that hearing, Nicole addressed the Court stating, pertinently [emphasis added]:

*“...when I’m doing the sustainability study I rely heavily on what the guardian determines as upcoming expenses for the ward...I do rely heavily on what the ward’s needs are in order to project the sustainability and to forecast the solvency of their estates.”*

Pursuant to ACJA §7-202(J)(1)(a) and (c)(2) and (3), Nicole has a duty to the Court and is mandated to perform all duties and discharge all obligations in accordance with applicable law, orders and rules and the ACJA. In addition, she is required to provide or ensure that reports, financial accounts, and other documents are complete, accurate, and consistent with the requirements specified in law, court rule, and applicable sections of the ACJA.

Moreover, Nicole is prohibited from knowingly filing any document with the Court that is “misleading, inaccurate, or false, or that contains misstatements, misrepresentations, or omissions of material facts,” per §7-202(J)(1)(c)(2) and (3).

*(2) Provide or ensure that reports, notices, financial accounts, and other documents are timely, complete, accurate, understandable, in a form acceptable to the court, consistent with the requirements specified in Arizona law, court rule, and the applicable sections of the Arizona Code of Judicial Administration;*

*(3) Not knowingly file any document with the court or present testimony to the court that is misleading, inaccurate, or false, or that contains misstatements, misrepresentations, or omissions of material facts;*

As detailed in the Summary of Factual Findings of Investigation involving:

- PB2015-070951
- PB2015-002195
- PB2015-070937
- PB2015-070041
- PB2016-080151
- PB2016-050160
- PB2016-070706
- PB2016-050366
- PB2016-050493
- PB2013-070160

The projected fiduciary fees and costs in the above-referenced cases, as those fees and costs appeared in the initial Estate budgets, were understated. Additional detail on projections and when those projections were reached or exceeded is provided in the Summary of Factual Findings of Investigation.

Further, as detailed in the Summary of Factual Findings of Investigation, fiduciary billing records demonstrated that Jeannean and Nicole issued checks to themselves prior to filing initial Estate budgets. Therefore, certain fiduciary fees and costs had already been paid or incurred by the Estate by the time the fiduciaries prepared and filed initial Estate budgets with the Court so Nicole should and ought to have known that the budget projections filed with the Court, pertinent to fiduciary fees and costs, omitted material facts including what the fiduciaries had already paid or incurred at the time of filing the budget and those projections, as filed with the Court, subsequently misrepresented the fiduciary fees and costs for the forthcoming year.

The judicially approved projected fiduciary fees and costs for the year were reached and realized within days or weeks of filing the Estate budgets.

On the application to be a licensed fiduciary, executed by Nicole on March 9, 2012, and in a series of renewal applications, each required Nicole to represent that she agreed to abide by or had read and reviewed ACJA §§7-201 and 7-202, applicable to licensed fiduciaries.

The ACJA §7-202(F)(10) requires any fiduciary to notify division staff if the fiduciary has knowledge that another licensed fiduciary has committed misconduct raising substantial question as to the fiduciary's honesty, trustworthiness, or qualifications as a licensed fiduciary. The Division has no record of Nicole contacting the Division regarding any such concerns for Jeannean.

Allegation 2 is substantiated involving b) Nicole.

***Allegation 3: Jeannean and Nicole filed misleading or false Affidavit of Persons to Be Appointed Guardian and/or Conservator with the Court.***

*ACJA § 7-201(F)(1) and § 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained in § 7-202(J).*

*§7-201(H)(6)(a), (g), (h), and (k)(6), (7) and (8):*

*6. Grounds for Discipline. A certificate holder is subject to disciplinary action if the board finds the certificate holder has engaged in one or more of the following:*

*a. Failed to perform any duty to discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, this section or the applicable section of the ACJA;*

*§7-202(J)(1)(a) and (c)(2) and (3):*

*1. Duty to the Court.*

*a. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders, and the Arizona Code of Judicial Administration.*

*c. The fiduciary shall:*

*(2) Provide or ensure that reports, notices, financial accounts, and other documents are timely, complete, accurate, understandable, in a form acceptable to the court, consistent with the requirements specified in Arizona law, court rule, and the applicable sections of the Arizona Code of Judicial Administration;*

*(3) Not knowingly file any document with the court or present testimony to the court that is misleading, inaccurate, or false, or that contains misstatements, misrepresentations, or omissions of material facts;*

*Arizona Rules of Probate Procedure Rule 20. Affidavit of Proposed Appointee:*

*Before the court appoints any person as a guardian or conservator, the person shall complete and file with the court the disclosure affidavit required by A.R.S. §14-5106.*

*A.R.S. §14-5106. Disclosure requirements for proposed guardians and conservators: restrictions by local rules.*

*A.R.S. §14-5106(A)(2), (4) and (11):*

*A. Before being appointed as temporary or permanent guardian or conservator every proposed appointee, except entities to in section 14-5411, subsection B, shall provide to the court, under oath, the following information:*

2. *Whether or not the proposed appointee has acted as guardian or conservator for another person within three years of the petition and, if so, the number of individuals for whom the proposed appointee is currently serving and the number of individuals for whom the proposed appointee's appointment has been terminated within the three-year period.*
4. *Whether or not the proposed appointee has acted within three years of the petition in a fiduciary capacity pursuant to a power of attorney and, if so, the number of persons for whom the appointee has so acted. If the proposed appointee has ever acted in such capacity for the proposed ward or protected person, the proposed appointee shall specify the date of execution of such power of attorney, the place where the power of attorney was executed, the actions taken by the proposed appointee pursuant to such power of attorney and whether or not such power of attorney is currently in effect.*
11. *Whether or not the proposed appointee has an interest in any enterprise providing housing, health care, or comfort care to any individual, and, if so, the name and address of each such enterprise and the extent of each such interest.*

**a) Jeannean**

For every probate case, the proposed appointee is required to file an Affidavit of Person to be Appointed Guardian and Conservator ("Affidavits"). The opening sentence on many of the Affidavits state or similarly state:

**The Petitioner and proposed appointee declares under penalty of perjury that each of the following statements are true, EXCEPT those marked False and explained in an exhibit attached to and incorporated into this Affidavit. [sic]**

**UNDER PENALTY OF PERJURY, I SWEAR OR AFFIRM: [sic]**

Jeannean executed Affidavits and, by and through counsel, filed those Affidavits with the Court.

The Division notes that language in Affidavits varied generally between two prescribed declarations [emphasis added]:

*I have no interest in any business that provides housing, health care, nursing care, residential care, assisted living, home health services, or comfort care services to any individual.*

And,

*I have no interest in any enterprise providing housing, health care, or comfort care services to any individual.*

The following are probate cases in which Jeannean executed and filed Affidavits and marked the box "True" representing that she did not have any such interests, as noted above.

- 1) PB2013-071060 - filed on November 21, 2013
- 2) PB2015-002195 - filed on April 21, 2015
- 3) PB2015-070937 - filed on August 13, 2015
- 4) PB2016-050160 - filed on May 5, 2016
- 5) PB2014-071019 - filed on May 23, 2016
- 6) PB2016-050493 - filed on June 20, 2016
- 7) PB2016-050366 - filed on July 11, 2016
- 8) PB2016-071488 - filed on December 28, 2016

Jeannean's Affidavits are misleading or false. She does have an interest in a business or enterprise that provides health care and nursing care.

- 1) WLJ's business website details information about WLJ and services provided:

#### About Us

- In the process of serving your clients...there may come a time when you notice or become aware that they may be in need of assistance that goes beyond your specific field of expertise...you learn of a debilitating illness or notice an increased level of confusion or disorientation...it's important to know where to turn for help in obtaining qualified guidance and assistance for clients what may be in need of specialized help, especially given the nature and concentration of our aging population.
- In those cases where the courts have appointed legal guardianship and/or conservatorship of a vulnerable adult, the need may arise to obtain expert opinions regarding the care and overall well-being of that person...you may wish to leverage the expertise of an objective, third-party in preparation for court appearances, depositions or medication hearings.

#### One-Time Care Assessments

- Assist in determining the extend of cognitive and/or physical impairment;
- Provide families, loved, and other responsible parties with suggestions regarding appropriate level of care and place (if required);
- Recommend community-based medical and support service options and resources.

#### Initial Cognitive/Physical Care Assessment with On-going Care Management

- Cognitive/physical care assessments and recommendations for appropriate plan of care and accompanying services and/or resources;

- Establish, coordinate, and monitor all community-based services. Coordinate all medical, dental, vision, and related appointments and transport;
- Monitor the care recipient's physical and emotional well-being;
- Provide emotional support to family members, loved ones, and other responsible parties, as appropriate...

#### Life Enrichment

- Client visits, as needed, to provide socialization and stimulation through activities and exercise.

The WLJ website advertises that WLJ's goal is to "advocate for the highest quality of life environment possible for our clients...by taking a lead role in the overall coordination and monitoring of care..." WLJ promotes the "many ways we can help" noting:

- Conducting initial cognitive/physical care assessment;
- Developing requisite care management plan recommendations and service options;
- Coordinating and monitoring recipient's overall care and well-being;
- Communicating care status and apprising care recipient, family members and other responsible parties of any significant care concerns;
- Implementing decisions rendered by care recipient, family members in order to resolve any concerns and communicating results

#### Expert Witness Services

- Perform initial one-time cognitive/physical care assessment and recommend appropriate care plan, placement and/or services;
- Review medical and/or case management histories in order to render professional, third-party opinion of cognitive and/or physical diagnoses, treatment, and appropriateness of current or proposed plan of care.

WLJ employs an LPN/Nurse Manager.

Per the information presented in the Summary of Factual Findings of Investigation, fiduciary billing demonstrated that WLJ's LPN provided various health care/nursing services in probate cases. WLJ's LPN was involved with numerous wards/protected persons.

The following are brief examples of some of the health and nursing services provided by the LPN in only these three (3) probate cases. While other examples were found across probate cases, these three case samples are provided to illustrate that WLJ does provide health care and nursing care, contrary to information appearing on the Affidavits executed and filed by Jeannean, noted earlier in this Allegation analysis.

#### 1) PB2015-002195

- Guardian directed LPN to take over medication management and scheduling of physical appointments from previous care-givers;
- Home visit to complete medi-set refills, noted some medical history regarding “problems” and “will monitor closely for future problems.”
- Travel to home for medication change out of N/O to increase a medication to higher dosage per physician;
- Home visit to follow up on symptoms of cold/congestion, coughing with nasal congestion and slight chest rattles noted.
- Home visit, blood pressure 120-60, pulse 48 – discussed pulse rate with caregiver and recommended that ward have a couple of drinks with caffeine during the day...this will keep her pulse at a more even and higher rate. Caregiver will check pulse several times during the day and will notify this nurse if it is lower than the current one.
- Vitals taken, blood pressure 160-60, pulse 60 – will continue for 1 more week of checks then notify primary care doctor.
- Home visit done for blood pressure check, blood pressure 160/70, pulse 48; blood pressure slightly elevated today, pulse continues to be lower than it should; discussion with caregiver regarding limiting the salt intake, keeping hydrated...would benefit from some caffeine intake throughout the day to keep her heart rate up. Will continue to follow blood pressure/heart rate 2x week and report to doctor.
- Home visit for vitals check, blood pressure 150/70, pulse 48

2) PB2013-071060

- Initial Assessment, vital signs taken: (blood pressure 160/90, pulse 76, respiration 24, temperature 98.4 O2 SATS 92%;
- No wounds noted or open skin areas;
- Bowel and bladder are okay, negative incontinence and negative urinary problems;
- Heart, arteries and lungs are clear.
- Traveled for follow up visit/check on ward;
- Transport to podiatrist, blood pressure was 166/97;
- Travel to visit ward, increased congestion in chest, negative temperature, cough without expectorant, chest sounds loose and wet.

3) PB2015-002195

- LPN accompanied Jeannean to Banner Del Webb Sage Unit for discharge and transport to memory care unit. Vital signs complete and within normal limits, patient alert to person and place. Lungs are clear throughout and no pedal edema noted.

The afore-mentioned tasks and responsibilities reveal that WLJ’s LPN provides health care and nursing services.



In addition, as detailed in the Summary of Factual Findings of Investigation, WLJ's LPN was involved in probate cases, including, but not limited to:

- PB2013-071060 - total hours billed: 29.9
- PB2014-071019 - total hours billed: 30.7
- PB2015-070041 - total hours billed: 20.6
- PB2015-002195 - total hours billed: 51.7
- PB2015-070951 - total hours billed: 21.0
- PB2016-050160 – total hours billed: 67.8

As further noted in the Summary of Factual Findings of Investigation, WLJ pays the LPN \$24.00 hourly and the fiduciary bills wards and protected persons \$105.00 to \$115.00 hourly for those nursing services.

In her interview with the Division, Jeannean stated that WLJ utilizes its staff LPN to provide nursing services to wards who live in licensed care facilities even when those facilities have existing nursing care and oversight. Jeannean said that her LPN reviews the ward's medical charts on a quarterly basis and reports the information to her. Jeannean stated that while she could obtain medical chart history herself when she was conducting her fiduciary visits, her LPN provides more in-depth detail on "incidents, incident reports, like falls...there's not always notice given." Jeannean said that because her LPN sees wards weekly, she provides "information to me, details on day to day activities of daily living, incidents, vitals, things that I don't obtain because I'm not there all the time." When asked what information her LPN could obtain from facility RNs that Jeannean could not obtain, she said "I guess what I'm telling you is they don't always provide it to us...I employ a nurse to keep me apprised of the status of my protected persons."

Jeannean told Division staff that most of her fiduciary fees are generated from the geriatric care manager work. She stated, "If I'm reading the statute correctly, the role of guardian is to provide care and treatment" and said visits are done quarterly unless it was necessary that visits occurred more frequently. Jeannean further stated that most of her visits to wards were done as part of her "care management piece" and said the "guardian piece" was when she attended care conferences, problems with behaviors, admissions, or addressing alternative placements for wards who cannot remain in current placements. She added "those are separated but when I am following up on their care I am doing that as their geriatric care manager."

In open Court, involving PB2015-070951, on October 16, 2017, Jeannean stated:

"one thing that I've tried to do to clarify for the Courts what my role is when I'm seeing my clients or my wards is that when I am there strictly as a geriatric care manager I am noting as such. As the guardian, that is noted for strictly what the guardian's duties would be but there is a daily head to toe need to be available for the care management side whether it's by telephone, medical emergencies, those types of things. I try to provide 24/7 availability to my clients...my fee for care management is, as a fiduciary, there is no difference in those fees, but I have

delegated numerous times to my CAN [Certified Nursing Assistant] or if the nurse is available and sometimes she not always is, for them to do those tasks.”

Jeannean’s statements establish that much of her billing was not related to her fiduciary and guardian responsibilities.

In her interview with the Division, Nicole initially stated that WLJ’s LPN was brought into situations where “medical professionals are not forthcoming with information related to the well-being of our person” and that “in a lot of cases” the medication professionals who work in licensed care facilities including assisted living or memory care units, do not “communicate all aspects of our persons’ care...so for us to rely on those professionals 100% of the time is not a benefit to our client if their needs are not being met in certain situations...we are also required to keep medical documentation on all our people...in our guardianship cases when we had a nurse on staff they would do assessments for our files.”

Nicole conceded that WLJ’s LPN was involved “in all our cases” to ensure the fiduciaries have “an accurate record.... our LPN is utilized to oversee the medical piece for our clients even though they are placed in facilities that have their own medical personnel. It is our duty, Jeannean’s duty more importantly as the guardian, to ensure that their medical needs are being met. It just takes one situation to create a sense of insecurity almost with us for all our clients so we always error on the side of involving our medical staff to oversee...our nurse still does the vitals and still goes to the care plans and reports directly to the guardian regarding their medical needs.” Nicole said that WLJ has been operating without an LPN currently and they have a certified medical assistant “that handles the vitals and Jeannean works closely with the group homes and medical professionals.”

Regarding non-fiduciary services, Nicole said that she views care management services as being separate from Jeannean’s services as guardian adding, “normally, the day to day care management of an individual is, that is a certified care manager’s role but the guardian mainly, you know the court allows one visit a month. Well, one visit a month doesn’t ensure, in the interim, that all of those needs are being met...”

A.R.S. §14-5106(A)(2), in part, requires proposed appointees to answer whether the proposed appointee has acted as a guardian or conservator for another person within the last three years and, if so, the number of individuals for whom the proposed appointed is currently serving and the number of individuals.

A.R.S. §14-5106(A)(4), in part, requires proposed appointees to answer whether the proposed appointee has in a fiduciary capacity pursuant to a power of attorney. It also requires an answer as to the number of persons for whom the appointed has so acted, specify the date of execution of such power of attorney, the place where the power of attorney was executed, the actions taken by the proposed appointee pursuant to such power of attorney and whether such power of attorney is currently in effect.

Notwithstanding the requirements of the referenced sections of A.R.S. §14-5106(A), in cases for which Jeannean executed and filed the said Affidavits, she simply indicated that she has acted “on a multitude of cases” as guardian/conservator and as power of attorney.

On the application to be a licensed fiduciary, executed by Jeannean on April 22, 2008, and in a series of renewal applications, each required Jeannean to represent that she agreed to abide by or had read and reviewed ACJA §§7-201 and 7-202, applicable to licensed fiduciaries.

WLJ is a business that provides health care/nursing care despite the opposing information attested to and sworn by Jeannean in the noted Affidavits. Arizona Rules of Probate Procedure Rule 20 and A.R.S. §14-5106(A)(11) demands that proposed appointees fully disclose to the Court information including any business interests and associations that may be potential conflicts of interest.

In addition to not complying with the terms of A.R.S. § 14-5106(A)(2), (4), and (11), by swearing on an Affidavit that she does not have any interest in a business that provides health care or nursing care, Jeannean provided misleading or false information to the Court, contrary to §7-202(J)(1)(a), and (c)(2) and (3):

*1. Duty to the Court.*

*a. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders, and the Arizona Code of Judicial Administration.*

*c. The fiduciary shall:*

*(2) Provide or ensure that reports, notices, financial accounts, and other documents are timely, complete, accurate, understandable, in a form acceptable to the court, consistent with the requirements specified in Arizona law, court rule, and the applicable sections of the Arizona Code of Judicial Administration;*

*(3) Not knowingly file any document with the court or present testimony to the court that is misleading, inaccurate, or false, or that contains misstatements, misrepresentations, or omissions of material facts;*

On the application to be a licensed fiduciary, executed by Jeannean on April 22, 2008, and in a series of renewal applications, each required Jeannean to represent that she agreed to abide by or had read and reviewed ACJA §§7-201 and 7-202, applicable to licensed fiduciaries.

The ACJA §7-202(F)(10) requires any fiduciary to notify division staff if the fiduciary has knowledge that another licensed fiduciary has committed misconduct raising substantial question as to the fiduciary’s honesty, trustworthiness, or qualifications as a licensed

fiduciary, the Division has no record of Jeannean contacting the Division regarding any such concerns for Nicole.

Allegation 3 is substantiated involving a) Jeannean.

*b) Nicole*

All the ACJA and A.R.S. provisions cited at the beginning of Allegation 3 involving Jeannean apply to Nicole.

The facts presented in the analysis of Allegation 3 involving Jeannean apply to Nicole.

Nicole executed Affidavits and, by and through counsel, filed those Affidavits with the Court and marked "True" representing that she did not have any business interest in a business that provided health care or nursing care. Nicole told Division staff that she joined le joined WLJ in 2010,

The following probate cases reflect Affidavits that Nicole executed and filed, by and through counsel, with the Court after she became a partner in WLJ on or about December 15, 2015, according to ACC records:

- 1) PB2016-050160 - filed on May 5, 2016
- 2) PB2014-071019 - filed on May 23, 2016
- 3) PB2016-050493 - filed on June 20, 2016
- 4) PB2016-050366 - filed on July 11, 2016
- 5) PB2016-071488 - filed on December 28, 2016

Per the analysis in Allegation 3 pertaining to Jeannean and detailed in the Summary of Factual Findings of Investigation, Nicole told Division staff that WLJ provides nursing care and geriatric care management. She said that the guardian is limited to a visit to the ward per month. Primarily visits to wards were done by Jeannean, as geriatric care manager, the LPN, Nicole in some cases, and WLJ support staff. Regarding non-fiduciary services, Nicole told Division staff that she views care management services as being separate from Jeannean's services as guardian adding, "normally, the day to day care management of an individual is, that is a certified care manager's role but the guardian mainly, you know the court allows one visit a month. Well, one visit a month doesn't ensure, in the interim, that all of those needs are being met..."

Regarding WLJ's LPN, Nicole initially stated that WLJ's LPN was brought into situations where "medical professionals are not forthcoming with information related to the well-being of our person" and that "in a lot of cases" the medication professionals who work in licensed care facilities including assisted living or memory care unites, do not "communicate all aspects of our persons' care...so for us to rely on those professionals 100% of the time is not a benefit to our client if their needs are not being met in certain situations...we are also required to keep medical documentation on all our people...in our guardianship cases when we had a nurse on staff they would do assessments for our files."

Nicole conceded that WLJ's LPN was involved "in all our cases" to ensure the fiduciaries have "an accurate record.... our LPN is utilized to oversee the medical piece for our clients even though they are placed in facilities that have their own medical personnel. It is our duty, Jeannean's duty more importantly as the guardian, to ensure that their medical needs are being met. It just takes one situation to create a sense of insecurity almost with us for all our clients so we always error on the side of involving our medical staff to oversee...our nurse still does the vitals and still goes to the care plans and reports directly to the guardian regarding their medical needs." Nicole said that WLJ has been operating without an LPN currently and they have a certified medical assistant "that handles the vitals and Jeannean works closely with the group homes and medical professionals."

A.R.S. §14-5106(A)(2), in part, requires proposed appointees to answer whether the proposed appointee has acted as a guardian or conservator for another person within the last three years and, if so, the number of individuals for whom the proposed appointed is currently serving and the number of individuals.

A.R.S. §14-5106(A)(4), in part, requires proposed appointees to answer whether the proposed appointee has in a fiduciary capacity pursuant to a power of attorney. It also requires an answer as to the number of persons for whom the appointed has so acted, specify the date of execution of such power of attorney, the place where the power of attorney was executed, the actions taken by the proposed appointee pursuant to such power of attorney and whether such power of attorney is currently in effect.

Notwithstanding the requirements of the referenced sections of §14-5106(A), in cases for which Nicole executed and filed the said Affidavits, she simply indicated that she has acted "on a multitude of cases" as guardian/conservator and as power of attorney.

On the application to be a licensed fiduciary, executed by Nicole on March 9, 2012, and in a series of renewal applications, each required Jeannean to represent that she agreed to abide by or had read and reviewed ACJA §§7-201 and 7-202, applicable to licensed fiduciaries.

WLJ is a business that provides health care/nursing care despite the opposing information attested to and sworn by Nicole in the noted Affidavits. Arizona Rules of Probate Procedure Rule 20 and A.R.S. § 14-5106(A)(11) demands that proposed appointees fully disclose to the Court information including any business interests and associations that may be potential conflicts of interest.

In addition to not complying with the terms of A.R.S. § 14-5106(A)(2), (4), and (11), by swearing on Affidavits that she does not have any interest in a business that provides health care or nursing care, Nicole provided misleading or false information to the Court, contrary to §7-202(J)(1)(a), and (c)(2) and (3):

*1. Duty to the Court.*

*a. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders, and the Arizona Code of Judicial Administration.*

*c. The fiduciary shall:*

*(2) Provide or ensure that reports, notices, financial accounts, and other documents are timely, complete, accurate, understandable, in a form acceptable to the court, consistent with the requirements specified in Arizona law, court rule, and the applicable sections of the Arizona Code of Judicial Administration;*

*(3) Not knowingly file any document with the court or present testimony to the court that is misleading, inaccurate, or false, or that contains misstatements, misrepresentations, or omissions of material facts;*

On the application to be a licensed fiduciary, executed by Nicole on March 9, 2012, and in a series of renewal applications, each required Nicole to represent that she agreed to abide by or had read and reviewed ACJA §§7-201 and 7-202, applicable to licensed fiduciaries.

The ACJA §7-202(F)(10) requires any fiduciary to notify division staff if the fiduciary has knowledge that another licensed fiduciary has committed misconduct raising substantial question as to the fiduciary's honesty, trustworthiness, or qualifications as a licensed fiduciary, the Division has no record of Nicole contacting the Division regarding any such concerns for Jeannean.

Allegation 3 is substantiated involving b) Nicole.

***Allegation 4: Jeannean and Nicole exceeded judicially approved Estate budgets and failed to timely file amended Estate budgets and seek judicial authority to exceed approved budgets.***

*ACJA § 7-201(F)(1) and § 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained in § 7-202(J).*

*ACJA §7-201(H)(6)(a), (g), (h), and (k)(6), (7) and (8):*

*6. Grounds for Discipline. A certificate holder is subject to disciplinary action if the board finds the certificate holder has engaged in one or more of the following:*

*b. Failed to perform any duty to discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, this section or the applicable section of the ACJA;*

*g. Exhibited gross negligence;*

*h. Exhibited incompetence in the performance of duties;*

*k. Engaged in unprofessional conduct, including:*

*(6) Failed to practice competently by use of unsafe or unacceptable practices;*

*(7) Failed during the performance of any responsibility or duty of the profession or occupation to use the degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent professional certificate holder engaged in similar practice under the same or similar conditions regardless of any level of harm or injury to the client or customer;*

*(8) Failed to practice competently by reason of any cause on a single occasion or on multiple occasions by performing unsafe or unacceptable client or customer care or failed to conform to the essential standards of acceptable and prevailing practice;*

*ACJA §7-202(J)(1)(a) and (b), and (c)(2) and (3):*

*1. Duty to the Court.*

*a. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders, and the Arizona Code of Judicial Administration.*

*b. The fiduciary shall not act outside of the authority granted by the court and shall seek direction from the court as necessary and court authorization for actions that are subject to court approval. The fiduciary shall clarify with the court any questions about the meaning of a court order or directions from the court before taking action based on the order or directions. If the fiduciary is aware of a court order that may conflict with this ACJA section, the fiduciary shall bring the possible conflict to the attention of the court and seek the court's direction.*

*c. The fiduciary shall:*

*(2) Provide or ensure that reports, notices, financial accounts, and other documents are timely, complete, accurate, understandable, in a form acceptable to the court, consistent with the requirements specified in Arizona law, court rule, and the applicable sections of the Arizona Code of Judicial Administration;*

*(3) Not knowingly file any document with the court or present testimony to the court that is misleading, inaccurate, or false, or that contains misstatements, misrepresentations, or omissions of material facts;*

*Arizona Rules of Probate Procedure Rule 30.3. Conservatorship Estate Budget A, D, E and F:*

*A. Unless otherwise ordered by the court, the conservator shall file a budget not later than the date the inventory is due and thereafter with each conservator's account, following consultation with any attorney or guardian ad litem for the protected person. The first budget shall cover the date of the conservator's initial appointment through and including the end date of the conservator's first account.*

*D. The conservator shall file an amendment to the budget and provide notice in the same manner as the initial budget within thirty days after reasonably projecting that the expenditures for any specific category will exceed the approved budget by a threshold prescribed by the arizona [sic] judicial council and as set forth in the instructions for the conservator's budget as adopted in the Arizona code of judicial administration.*

*E. An interested person may file a written objection to the budget or amendment within fourteen days after the filing date of the budget or amendment. On the filing of a written objection, the court may overrule all or part of the objection, order a reply by the conservator or set a hearing on the objection. The court may also set a hearing in the absence of an objection. At a hearing, the conservator has the burden to prove that a contested budget item is reasonable, necessary and in the best interest of the protected person. If an interested person fails to object to a budget item within fourteen days after the filing date of the budget or amendment, the budget item shall be deemed presumptively reasonable at the time of the conservator's account.*

*F. The court may order that a budget is accepted in the absence of an objection. On the court's own motion or upon the filing of a written objection, the court shall approve, disapprove or modify the budget to further the protected person's best interest.*

*Instructions for Conservator Account Form 5 (Conservatorship Estate Budget) [effective September 1, 2012]:*

#### *Amended Budget*

*Although the amended budget is not a document the conservator must file with each account, it is required if the conservator projects any expense category in the most recently completed in Schedule 1 to exceed either ten percent (10%) or \$2,000, whichever is great. The conservator is required to file the amended budget within thirty days of identifying the projected change in expense. The conservator should use the Schedule 1 format to complete the amended budget.*

*Pursuant to Rules of Probate Procedure 30.3(D), the conservator shall file an amendment to the budget and provide notice in the same manner as the initial budget within thirty days after reasonably projecting that the expenditures for any*



*specific category will exceed the approved budget by ten percent (10%) or \$2,000, whichever is greater. It should be noted however, the criteria requiring an amended budget is subject to change. Therefore, you should check with the court to verify the current requirement for filing an amended budget.*

The Court approves initial and subsequent, Estate budgets based on the information provided to the Court by the fiduciaries. After judicial approval of the spending projections for the upcoming year, as contained in the Estate budgets, fiduciaries are required to remain within those spending limits. Fiduciaries are obligated to file amended budgets with the Court if spending exceeds \$2,000.00 (two thousand dollars) or 10% (ten percent) in any line of the budget once the fiduciary “reasonably” knows that spending will exceed the threshold. Further, fiduciaries are required to serve notice on all interested parties so that an interested party may file a written objection to the budget or amendment.

***a) Jeannean***

As previously detailed in the Summary of Factual Findings of Investigation, the following demonstrate the projected fiduciary fees and costs, as submitted to the Court by the fiduciaries, verses actual fees and costs filed by the fiduciaries at the end of the accounting year. The Division notes that the fiduciary fees and costs included the guardian and conservator fees and expenses, geriatric care manager fees and expenses, nurse’s fees and costs and fees and costs associated with WLJ’s support staff who assisted Jeannean and Nicole:

1) PB2015-070951

Projected fees and costs:	\$21,000.00
Actual fees and costs:	\$30,932.00

2) PB2015-002195

Projected fees and costs:	\$20,000.00
Actual fees and costs:	\$83,912.53

3) PB2015-070937

Projected fees and costs:	\$25,000.00
Actual fees and costs:	\$82,249.12

4) PB2015-070041

Projected fees and costs:	\$7,500.00
Actual fees and costs:	\$21,260.42

5) PB2016-050151

Projected fees and costs:	\$35,000.00
Actual fees and costs:	\$58,589.46

6) PB2016-050160

Projected fees and costs:	\$25,000.00
Actual fees and costs:	\$70,185.41

**\*\* The Honorable Andrew J. Russell's June 1, 2018, Order Approving First Annual Account, noted that the fees and expenses incurred by the fiduciary totaled \$84,035.41.**

7) PB2016-070706

Projected fees and costs:	\$40,000.00
Actual fees and costs:	\$46,080.31

8) PB2016-050366

Projected fees and costs:	\$40,000.00
Actual fees and costs:	\$56,260.27

9) PB2016-050493

Projected fees and costs:	\$40,000.00
Actual fees and costs:	\$58,691.55

10) PB2013-071060

Projected fees and costs:	\$12,000.00
Actual fees and costs:	\$20,697.04

Per the Summary of Factual Findings of Investigation, Court staff alerted the fiduciaries, via CARRs, that amended budgets were required when the budget is overrun by more than \$2,000.00 or 10% (ten percent) of the budget:

1) PB2013-071060

CARR date April 3, 2015:

*It was also noted that the budget for fiduciary services was \$12,000 and that there was no amendment to that budget as is required when the budget is overrun by more than \$2,000 or 10% of the budget. In this case the budget was overrun by over 70% and almost \$8,700.*

2) PB2015-002195

CARR date November 7, 2016:

*The Court Accountant notes that whenever a budget variance of greater than \$2,000 and 10% of the Court approved budget are anticipated by the Conservator, an amended budget must be filed with this Court (see instructions for the preparation of an Account). The Court Accountant notes that there were line items in this filing that had budget variances of greater than \$2,000 and 10% of the Court approved budget (inducing fiduciary fees) and yet an amended budget was not filed.*

*Recommendation: In the future, please file an amended budget to this Court as soon as a variance of \$2,000 and 10% of the budget line item is identifies [sic] so that the Court can review these changes before costs are incurred.*

CARR date March 26, 2018:

*Line 11 (Food, Clothing, and Shelter). Line 18 (Fiduciary Fees and Costs), and Line 21 (Other administrative Fees and Costs) exceeded the amended budget filed on 05/16/17, but a second amended budget was not timely filed with the Court. An amended budget is required to be filed within 30 days after it is reasonably projected that expenses for a specific category will exceed the approved budget by \$2,000 or 10%, whichever is greater. The Court's record shows a second amended budget was filed on 08/01/17, which is two full months after the account period ended, and therefore, is too late to be considered by the Court. For example, an amended budget cannot be submitted for an account period that has already ended.*

*Recommendation: For future account periods, the conservator should file an amendment to the budget and provide notice in the same manner as the initial budget within thirty days after reasonably projecting that the expenditures for any specific category will exceed the approved budget by ten percent (10% or \$2,000, whichever is greater.*

3) PB2016-050160

CARR date November 7, 2017

*Fiduciary fees and costs exceeded the initial budget filed on 09/15/16 by \$45,185.41 and 180%, but an amended budget was not timely filed with the Court. An amended budget is required to be filed within 30 days after it is reasonably projected that expenses for a specific category will exceed the approved budget by \$2,000.00 or 10%, whichever is greater. The Court's record shows an amended budget was filed on 06/20/2017, which is nearly three full months after the account period ended, and therefore, is too late to be considered by the Court. For example, an amended budget cannot be submitted for an account period that has already ended.*

*Recommendation: For future account period, the conservator should file an amendment to the budget and provide notice in the same manner as the initial budget*

*within thirty days after reasonably projecting that the expenditures for any specific category will exceed the approved budget by ten percent (10%) or \$2,000, whichever is greater.*

The Division did not find any record of the fiduciary timely filing amended budgets in accordance with the requirement that if spending exceeds \$2,000.00 (two thousand dollars) or 10% (ten percent) in any line of the budget once the fiduciary reasonably knows that the spending threshold and variance has or will occur. The fiduciaries surpassed their initial projections and Court-approved spending thresholds and did not seek judicial approval prior to continuing to exceed spending thresholds. When the fiduciaries did file amended budgets those were filed when the fiduciaries filed petitions to approve their fees and annual accounting at the end of the accounting period, contrary to the requirements of Rule 30.3.

As detailed in the Summary of Factual Findings of Investigation, Jeannean told Division staff that most of her fees and costs were associated with WLJ providing non-fiduciary services including her services as geriatric care manager and the utilization of WLJ's LPN.

Per the analysis contained in Allegation 2, Jeannean, with Nicole, actively participated in the preparation of initial Estate budgets and subsequent budgets. If Jeannean's statements to the Division are truthful, she and Nicole audited and reviewed expenses and fiduciary fees and costs monthly therefore Jeannean should and ought to have reasonably known when any line item in the previously approved Estate budget including fiduciary fees and costs would exceed judicially authorized spending thresholds.

Typically, Jeannean serves as guardian and not as conservator. The Division acknowledges that Rule 30.3 expressly deals with the conservator filing Estate budgets and amended budgets thereafter so the primary responsibility for filing amended budgets is the conservators and not the guardian. However, Jeannean is a licensed fiduciary and she is mandated to comply with all Court rules and the ACJA. As she acknowledged to Division staff, most of fiduciary/guardian's fees that surpassed the budget threshold authorized by the Court were incurred by Jeannean and her office providing non-fiduciary services to wards. Notwithstanding the conflict of interest issues presented in Allegation 1, Jeannean told Division staff that she and Nicole monthly audited and reviewed expenses, and fiduciary fees and costs.

Per the Summary of Factual Findings of Investigation, in her interview with Division staff, Nicole stated that after Court approves the initial Estate budgets she and Jeannean strive to remain within their spending projections. Nicole further said, "we monitor each individual category and if any one of those categories goes over by 10% (ten percent) we alert the Court.

Although Jeannean is not directly accountable for *filing* an amended budget, per Rule 30.3(D), her professional responsibility is lessened somewhat but she is a licensed fiduciary and is mandated to comply with all laws, Court rules and ACJA, as does Nicole. In her interview with the Division, Jeannean offered no claim that she timely informed Nicole

that the spending thresholds for fiduciary fees and costs were near or had exceeded the expenditures sanctioned by the Court nor did Jeannean assert that she alerted Nicole and that she failed to timely act on that information and file an amended budget, as required.

On the application to be a licensed fiduciary, executed by Jeannean on April 22, 2008, and in a series of renewal applications, each required Jeannean to represent that she agreed to abide by or had read and reviewed ACJA §§7-201 and 7-202, applicable to licensed fiduciaries.

The ACJA §7-202(F)(10) requires any fiduciary to notify division staff if the fiduciary has knowledge that another licensed fiduciary has committed misconduct raising substantial question as to the fiduciary's honesty, trustworthiness, or qualifications as a licensed fiduciary, the Division has no record of Jeannean contacting the Division regarding any such concerns for Nicole.

Allegation 4 is substantiated involving a) Jeannean.

***b) Nicole***

All the provisions of ACJA and Arizona Rules of Probate Procedure cited at the beginning of Allegation 4 involving Jeannean apply to Nicole.

The facts presented in the analysis of Allegation 4 apply to Nicole.

Per the information presented in the Summary of Factual Findings of Investigation, the following demonstrate the projected fiduciary fees and costs, as submitted to the Court by the fiduciaries, verses actual fees and costs filed by the fiduciaries at the end of the accounting year:

1) PB2015-070951

Projected fees and costs:	\$21,000.00
Actual fees and costs:	\$30,932.00

2) PB2015-002195

Projected fees and costs:	\$20,000.00
Actual fees and costs:	\$83,912.53

3) PB2015-070937

Projected fees and costs:	\$25,000.00
Actual fees and costs:	\$82,249.12

4) PB2015-070041

Projected fees and costs:	\$7,500.00
Actual fees and costs:	\$21,260.42

5) PB2016-050151

Projected fees and costs:	\$35,000.00
Actual fees and costs:	\$58,589.46

6) PB2016-050160

Projected fees and costs:	\$25,000.00
Actual fees and costs:	\$70,185.41

**\*\* The Honorable Andrew J. Russell's June 1, 2018, Order Approving First Annual Account, noted that the fees and expenses incurred by the fiduciary totaled \$84,035.41.**

7) PB2016-070706

Projected fees and costs:	\$40,000.00
Actual fees and costs:	\$46,080.31

8) PB2016-050366

Projected fees and costs:	\$40,000.00
Actual fees and costs:	\$56,260.27

9) PB2016-050493

Projected fees and costs:	\$40,000.00
Actual fees and costs:	\$58,691.55

10) PB2013-071060

Projected fees and costs:	\$12,000.00
Actual fees and costs:	\$20,697.04

Per the Summary of Factual Findings of Investigation, Court staff alerted the fiduciaries, via CARRs, that amended budgets were required when the budget is overrun by more than \$2,000.00 or 10% (ten percent) of the budget:

1) PB2013-071060

CARR date April 3, 2015:

*It was also noted that the budget for fiduciary services was \$12,000 and that there was no amendment to that budget as is required when the budget is overrun by more than \$2,000 or 10% of the budget. In this case the budget was overrun by over 70% and almost \$8,700.*

2) PB2015-002195

CARR date November 7, 2016:

*The Court Accountant notes that whenever a budget variance of greater than \$2,000 and 10% of the Court approved budget are anticipated by the Conservator, an amended budget must be filed with this Court (see instructions for the preparation of an Account). The Court Accountant notes that there were line items in this filing that had budget variances of greater than \$2,000 and 10% of the Court approved budget (inducing fiduciary fees) and yet an amended budget was not filed.*

Recommendation: *In the future, please file an amended budget to this Court as soon as a variance of \$2,000 and 10% of the budget line item is identifies [sic] so that the Court can review these changes before costs are incurred.*

CARR date March 26, 2018:

*Line 11 (Food, Clothing, and Shelter), Line 18 (Fiduciary Fees and Costs), and Line 21 (Other administrative Fees and Costs) exceeded the amended budget filed on 05/16/17, but a second amended budget was not timely filed with the Court. An amended budget is required to be filed within 30 days after it is reasonably projected that expenses for a specific category will exceed the approved budget by \$2,000 or 10%, whichever is greater. The Court's record shows a second amended budget was filed on 08/01/17, which is two full months after the account period ended, and therefore, is too late to be considered by the Court. For example, an amended budget cannot be submitted for an account period that has already ended.*

Recommendation: *For future account periods, the conservator should file an amendment to the budget and provide notice in the same manner as the initial budget within thirty days after reasonably projecting that the expenditures for any specific category will exceed the approved budget by ten percent (10% or \$2,000, whichever is greater.*

3) PB2016-050160

CARR date November 7, 2017

*Fiduciary fees and costs exceeded the initial budget filed on 09/15/16 by \$45,185.41 and 180%, but an amended budget was not timely filed with the Court. An amended budget is required to be filed within 30 days after it is reasonably projected that expenses for a specific category will exceed the approved budget by \$2,000.00 or 10%,*

*whichever is greater. The Court's record shows an amended budget was filed on 06/20/2017, which is nearly three full months after the account period ended, and therefore, is too late to be considered by the Court. For example, an amended budget cannot be submitted for an account period that has already ended.*

*Recommendation: For future account period, the conservator should file an amendment to the budget and provide notice in the same manner as the initial budget within thirty days after reasonably projecting that the expenditures for any specific category will exceed the approved budget by ten percent (10%) or \$2,000, whichever is greater.*

The Division did not find any record of the fiduciary *timely* filing amended budgets in accordance with the requirement that if spending exceeds \$2,000.00 (two thousand dollars) or 10% (ten percent) in any line of the budget once the fiduciary reasonably knows that the spending threshold and variance has or will occur. The fiduciaries surpassed their initial projections and Court-approved spending thresholds and did not seek judicial approval prior to continuing to exceed the spending thresholds. When the fiduciaries did file amended budgets those were filed at the time the fiduciaries filed petitions to approve their fees and annual accounting at the end of the accounting period, contrary to the requirements of Rule 30.3.

As detailed in the Summary of Factual Finding of Investigation, Nicole told Division staff that after the Court approves their initial Estate budgets, she and Jeannean endeavor to remain within their spending projections stating, "we always try to remain within those budget amounts and there are circumstances that prevent that from happening and that is due to unknown assets at the time that we've completed it, decline in their medical and unforeseen expenses or assets that we don't know about at that time." She added that budgets are amended "because we are not always aware of all of the information in the first 90 days...income we don't know about, expenditures that maybe they were past due on a credit card for six months and we never received any type of statement and they owed \$8,000.00, those types of things. Unknowns, those are what creates the need for amended budgets." Nicole said she and Jeannean monitored their expenditures and professional fees for every case monthly although as of the last eight (8) months, approximately, they say they are now reviewing the budgets and expenses every two weeks.

Should Jeannean and Nicole require additional money from protected persons from what the fiduciaries projected in the initial Estate budgets and approved by the Court, Nicole stated, "...what's required of me is to notify within, I believe it's 30 (thirty) days of any change more than 10% (ten percent) of the budget...." She further said, "we monitor each individual category and if any one of those categories goes over by 10% (ten percent) we alert the Court. Nicole also said she complies with the prescribed thresholds and timely files amended budgets but in three (3) cases she said it was her attorney that failed to timely file the amended budget with the Court.

Notwithstanding Nicole's statements regarding her understanding of what is required of her in those circumstances, the Division's review did not find evidence that Nicole timely



filed amended budgets, as required by Rule 30.3(D). In cases where amended budgets were filed, Nicole filed those when the fiduciaries also filed their petition for approval of the first annual accounting and for approval of fiduciary fees and expenses, at the end of the accounting year.

When fiduciaries “reasonably” know that more money is required from the protected person above initial budget spending projections, fiduciaries must first timely file an amended budget, serve notice to interested parties and seek judicial authority to exceed any previously approved budgets. These rules exist as part of the system of checks and balances to effectuate and preserve transparency in the judicial process; ensure that fiduciaries are acting within judicial authorization; and prevent potential misuse, abuse or exploitation of protected persons. With respect to judicial process, serving notice to all interested parties allows parties entitled to notice, an opportunity to file a written objection to any new spending and accords the Court discretion as to whether to set a hearing on the matter even in the absence of any such objections.

The Court that must be noticed and approve any new or additional spending of the protected persons’ monies including increases in fiduciary fees above and beyond what the fiduciaries projected. By failing to first timely file amended Estate budgets, Nicole, and Jeannean to the extent she bears responsibility, elected to circumvent the judicial system and process, disenfranchised interested parties entitled to notice the right to have a voice in what should be a transparent process, and undermined the Court’s authority and ability to set a hearing and “approve, disapprove or modify the budget to further the protected person’s best interest,” as stated in Rule 30.3(F). In addition, by disregarding previous judicially imposed limitations on expenditures of the protected person’s money, Nicole and Jeannean are likely acting outside of the authority granted by the Court.

ACJA §7-202(J)(1)(a) and (b), and (c)(2) [emphasis added]:

*1. Duty to the Court.*

*a. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders, and the Arizona Code of Judicial Administration.*

*b. The fiduciary shall not act outside of the authority granted by the court and shall seek direction from the court as necessary and court authorization for actions that are subject to court approval.*

The Division notes that, on appointment, guardians and conservators have the *authority* to make decisions on behalf of wards and protected persons but fiduciaries cannot disregard Court approved spending limitations of protected persons’ funds and must conform to the essential standards of acceptable and prevailing practice.

On the application to be a licensed fiduciary, executed by Nicole on March 9, 2012, and in a series of renewal applications, each required Nicole to represent that she agreed to abide by or had read and reviewed ACJA §§7-201 and 7-202, applicable to licensed fiduciaries.

The ACJA §7-202(F)(10) requires any fiduciary to notify division staff if the fiduciary has knowledge that another licensed fiduciary has committed misconduct raising substantial question as to the fiduciary's honesty, trustworthiness, or qualifications as a licensed fiduciary, the Division has no record of Jeannean contacting the Division regarding any such concerns for Jeannean, despite that Jeannean's projections regarding her projections of her fiduciary fees and costs were consistently wrong and, likely, deceptive.

Allegation 4 is substantiated involving b) Nicole.

***Allegation 5: Jeannean and Nicole failed to comply with the Arizona Statewide Fee Guidelines set out in ACJA §3-303.***

*ACJA § 7-201(F)(1) and § 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained in § 7-202(J).*

*ACJA §7-201(H)(6)(a), (g), (h), (j) and (k)(6), (7) and (8):*

*6. Grounds for Discipline. A certificate holder is subject to disciplinary action if the board finds the certificate holder has engaged in one or more of the following:*

*a) Failed to perform any duty to discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, this section or the applicable section of the ACJA;*

*g. Exhibited gross negligence;*

*h. Exhibited incompetence in the performance of duties;*

*j. The existence of any cause for which original certification or renewal of certification could have been denied pursuant to subsections (E)(2)(c) or (G)(4)(c) and the applicable section of the ACJA;*

*k. Engaged in unprofessional conduct, including:*

*(6) Failed to practice competently by use of unsafe or unacceptable practices;*

*(7) Failed during the performance of any responsibility or duty of the profession or occupation to use the degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent professional certificate holder engaged in similar practice under the same or similar conditions regardless of any level of harm or injury to the client or customer;*

*(8) Failed to practice competently by reason of any cause on a single occasion or on multiple occasions by performing unsafe or unacceptable client or customer care or failed to conform to the essential standards of acceptable and prevailing practice;*

*ACJA §7-201(E)(2)(c)(2)(b)(iii):*

*(2) The board may deny certification of any applicant if one or more of the following is found:*

*(b) The applicant or an officer, director, partner, member, trustee, or manager of the applicant:*

*(iii) Has conduct showing the applicant or an officer, director, partner, member, trustee, or manager of the applicant is incompetent or a source of injury and loss to the public;*

*ACJA §7-201(G)(4)(c):*

*4. Decision Regarding Renewal.*

*c. The board may deny renewal of certification for any of the reasons stated in subsection (E)(2)(c).*

*ACJA §3-303(C):*

**C. Purpose.** [sic] *Pursuant to Rule 33(F), Arizona Rules of Probate Procedure, "When determining reasonable compensation, the superior court shall follow the statewide fee guidelines set forth in the Arizona Code of Judicial Administration". Therefore the use of these guidelines is mandatory.*

*ACJA §3-303 (D)(2)(c), (g)(2), and (k) and (l):*

*2. Compensation of the Professional. Unless otherwise ordered by the court, compensation and reimbursement for professional services shall meet the following requirements:*

*c. "Block billing" is not permitted. Block billing occurs when a timekeeper provides only a total amount of time spent working on multiple tasks, rather than an itemization of the time expended on a specific task.*

*g. The hourly rate charged for any given task shall be at the authorized rate, commensurate with the task performed, regardless of whom actually performed the work, but clerical and secretarial activities are not separately billable from the Professional. The Professional shall abide by the following requirements:*

*(2) A fiduciary may only bill a fiduciary rate when performing services that require the skill level of the fiduciary; a companion rate when performing companion services; a bookkeeper rate when performing bookkeeping and bill-paying services for a client; and shall not charge when performing secretarial or clerical services, for example.*

*k. Time and expenses to correct or mitigate errors caused by the professional, or their staff, are not billable to the Estate.*

*l. Time or expenses to respond or defend against a regulatory complaint against the professional and the professional's licensed business entity are not billable to the Estate.*

*ACJA §3-303 (D)(3)(c)(1), (3), (4) and (l), (m) and (q)*

*3. Judicial Officer Review. The judicial officer shall consider the following general compensation factors when reviewing hourly rates and charges and determining what constitutes reasonable compensation:*

*c. Common fiduciary services rendered in a routine guardianship or conservatorship engagement. The fiduciary shall provide a reasonable explanation for exceeding these services. The common fiduciary services are:*

*(1) Routine bookkeeping, such as disbursements, bank reconciliation, data entry of income and expenditures, and mail processing: four (4) hours per month, at a commensurate rate for such services;*

*(3) One routine personal visit per month by the fiduciary to the ward or protected person;*

*(4) Preparation of conservator's account and budget: five (5) hours per year;*

*l. The work actually performed, including the time actually expended, and the attention and skill-level required for each task, including whether a different person could have rendered better, faster, or less expensive service;*

*m. The result, specifically whether benefits were derived from the efforts, and whether probable benefits exceeded costs;*

*q. The fidelity and loyalty displayed by the Professional, including whether the Professional put the best interest of the Estate before the economic interest of the professional.*

***a) Jeannean***

As detailed in the Summary of Factual Findings of Investigation, the Division reviewed Court records including numerous CARRs issued to the fiduciaries. In addition to recurrent accounting inaccuracies and mistakes that were routinely highlighted by the Court's Accountants over numerous probate cases over years, the Court's Accountants also

alerted the fiduciaries to problems with their billing practices because those billings were not in compliance with the Fee Guidelines.

Per the Summary of Factual Findings of Investigation, CARRs were issued in the following cases:

- 1) PB2013-071060 - CARR April 3, 2015
- 2) PB2015-002195 - CARR November 7, 2016 and September 27, 2017
- 3) PB2014-071019 - CARR February 23, 2017
- 4) PB2015-070951 - CARR October 11, 2017
- 5) PB2016-050160 – CARR November 7, 2017
- 6) PB2016-071488 – CARR February 13, 2018
- 7) PB2016-050493 - CARR March 26, 2018

These CARRs identify repeated concerns including, but not limited to:

- Exceeding the number of routine visits to wards by the guardian and/or staff;
- Multiple visits to wards by different staff members;
- Multiple staff attending meetings with wards/protected persons;
- Multiple staff attending court hearings;
- Multiple staff performing the same tasks;
- Fiduciary support staff accompanying the fiduciary to various meetings and doctor's appointments;
- Charging full fiduciary rates rather than a lower companion rate;
- Charging \$115.00 to obtain and deliver \$200.00 in cash;
- Excessive charges i.e. conservator charging \$120.50 to change a light bulb in one case
- Fiduciary performing various property management function (landscaping, locksmith and carpet work) in which fees were likely greater than the cost of the cost of carpet work performed);
- Travel to service providers to schedule an appointment when that could have been handled by a telephone call;
- Unnecessary communication between guardian and conservator;
- Not filing amended budgets after exceeding the budget;
- Duplicative charges;
- Charging records management fees (clerical – maintenance of files);
- Time and expense billed for mitigating errors.

As noted in the Summary of Factual Findings of Investigation, the Court identified concerns with the fiduciaries charging excessive fees:

- 1) PB2013-07160

Pursuant to the November 1, 2016 Minute Entry of Honorable Justin McGuire, he noted that in response to the Court's concern, the conservator set up a system to permit delivery of monthly room and board payment which eliminated the need to hand deliver checks

although the Court could find no reason why this system was not put in place prior to the beginning of the current accounting period. The Court determined that certain fees were unreasonable and unnecessary and disapproved fees including charging full fiduciary rates rather than companion rates and billing for excessive visits to wards.

2) PB2014-071019

The Honorable Frank Moskowitz's Minute Entry of September 11, 2017, wrote that the Court Accountant believes that the fiduciary fees remain high even after the \$1,050.50 credit adding that this is "at least the third Accounting by these fiduciaries where the Court Accountant has recently raised concerns with this Judicial Officer about their billings being high or excessive...The Court is concerned about the billing practices of these fiduciaries."

The Court, in part, demanded a breakdown of guardian's and conservator's fees and explanations as to why the fiduciaries are entitled to payment when it appeared that they were not in compliance with A.R.S. §§ 14-5109(A) 14-1104(b), 14-5109(c), Rule 33 (a) of the Arizona Rules of Probate Procedure, and Arizona Statewide Fee Guidelines.

3) PB2016-071488

In his Minute Entry of September 7, 2017, the Honorable Justin McGuire noted that the Court was in receipt of a report prepared by the Court Accountant which indicated that because of the "extraordinarily large amount of fees incurred" by the temporary guardian and conservator "during their very abbreviated appointment in this case, the case falls into the High Risk category."

4) PB2016-070706

The Honorable Justin McGuire, Minute Entry of October 18, 2017, in part, raised concerns about the fiduciary fees falling into the "High Risk" category based on the Court Accountant's report.

5) PB2015-002195

The May 18, 2018 Minute Entry of the Honorable Lori Horn Bustamante detailed concerns that the "Guardian and Conservatorship fees are high and consumed approximately 4% of the estate. The fees are higher than would be anticipated pursuant to the fee guidelines. For example, the fee guidelines suggest 5 hours per year to prepare the account and budget yet the Conservator spent 31 hours. In addition, Ms. Frieders had a full time paid caregiver yet the Guardian appeared to be overly involved in the care of Ms. Frieders thereby incurring additional costs to the estate...the fiduciaries are hereby put on notice that they need to take steps in the future to be more mindful of the fee guidelines."

6) PB2016-050160

The June 1, 2018 Minute Entry of the Honorable Andrew J. Russell detailed concerns with, but not limited to, block billing, multiple fiduciaries/staff attending hearing [charges of \$1,200.00 to attend June 20, 2016 hearing which lasted 32 minutes], multiple fiduciaries/staff billing for work where only one was needed, unreasonable billing, and charges for clerical or secretarial services.

As stated in the Summary of Factual Findings of Investigation, in PB2016- 050160, in addition to the above-noted issues, Commissioner Andrew Russell's said Minute Entry detailed many unreasonable and unnecessary costs, as follows:

■ *Unreasonable billing:*

- *Both JA and JMS billed for counting loose change found at Ms. Petro's residence. Together they billed \$120 to count change that likely totaled much less.*
- *JA billed \$170 on 6/9/16 for "[a]ccompanied Jeannean to pick up boxes and traveled to Pathways to look at Irene's room." Two people were not needed for such a task.*
- *On 6/30/16, LB billed \$332.50 simply to accompany the Conservator while the Conservator closed accounts at Chase Bank and deposited money at Mutual of Omaha Bank. The protected person should not have to pay two people to do such tasks.*
- *NLS billed \$57.50 on 7/7/16 to go to the Glendale Social Security Administration office, only to leave because the line was too long. This service provided no benefit to the protected person.*
- *On 7/21/16, LB billed \$142.50 to return a vacuum to a neighbor. This amount may well have exceeded the value of the vacuum itself.*
- *SR billed \$92 on 10/18/16 to travel to a pharmacy and pick up Ms. Petro's medications, only to find out that another of the Conservator's employees retrieved the medications the previous day.*
- *To make it worse, SB then billed the protected person an additional \$23 to talk with the Conservator and apologize for SB's own "confusion." See SB's fourth billing entry on 10/18/16. The Court cannot fathom why the Conservator believes it is appropriate to force the protected person to pay for miscommunication between the Conservator's employees, and then pay even more for an employee's apology for such miscommunication.*

The Court determined that the fiduciary's fees and costs were egregious:

*IT IS ORDERED approving fiduciary fees and costs for the first accounting period in the amount of \$45,035.41. Any fees or costs paid to the Conservator above this amount (for the first accounting period) shall be repaid to the Conservatorship account no later than June 29, 2018.*

This represents a reduction of **\$39,000.00** [emphasis added] in excessive and unreasonable fiduciary fees and expenses from the \$84,035.41 submitted by the fiduciaries pursuant to Rule 33 to the Court's approving \$45, 035.41 in fiduciary fees and expenses.

In PB2015-002195, the CARR noted that in addition to exceeding the number of routine visits to the ward by the guardian and conservator and their staff, the Court's Accountant found that the guardian performed certain property management functions regarding landscaping and locksmith and the guardian charged for involving carpet work performed in which the fiduciary fees were "likely greater than the cost of the carpet work performed."

Other concerns noted in the CARR related to the guardian visiting the office of a service provider rather more effectively handling the issue by telephone. Personal visits were made to wards without calling ahead to ensure the ward was there and the ward was not there at the time of visit therefore resulting in no benefit to the ward.

Per the Summary of Factual Findings, in probate case reviewed, the Division found that Jeannean was not in compliance with the Fee Guidelines. Consistent with the CARRs issued, fiduciary billing records demonstrated that Jeannean frequently exceeded the number of routine visits to wards as allotted by §3-303 (3)(c)(3) and she continued to do despite the Court essentially putting her on notice in 2015, if not sooner, that she was exceeding the routine visits contrary to the Fee Guidelines, evidenced by the CARRs issued. The Division found examples in various cases reviewed where Jeannean billed rates not commensurate with tasks performed. This included, at times, shopping at full fiduciary rates, or charging full rates for what should have been done at companion rates.

Consistent with numerous CARRs referenced, the Division reviewed the fiduciaries' billings and noted similar issues including, but not limited to:

- Excessive visits with wards
- Unnecessary communications/staffing between guardian and conservator and their respective staff;
- Billing for tasks that exceeded the probable benefit to the ward or protected person;
- Billing at rates not commensurate with tasks;
- Multiple staff at Court hearings;
- Multiple staff performing the same tasks;
- Multiple staff meeting with wards at the same time;
- Multiple visits on any given day or successive days by different staff members in addition to the guardian and/or conservator;
- Many personal visits to simply "check on" wards;
- Block billing.

Referencing the Summary of Factual Findings of Investigation, as part of her Response to the Complaint, dated December 29, 2017 Jeannean and Nicole stated that "at all times" they have acted in compliance with the Fee Guidelines.



In her interview with the Division, Jeannean stated “I’m sure trying to, yes” when asked if she was complying with the Fee Guidelines.

In her interview with the Division, Nicole stated, “I’ve always been aware of the guidelines” and said she knew what was required of her regarding the Fee Guidelines.

Jeannean and Nicole told Division staff that their normal business practice was to audit and review their fiduciary fees and costs monthly and did so together. Nicole indicated that she reviews their fees to ensure compliance with the threshold set out in the Fee Guidelines.

Division records show that during an interview with Division staff on April 29, 2015, Nicole was asked, “How do you ensure compliance with the Statewide Fee Guidelines?” to which she replied, “We are compliant with Guidelines. Very much aware of Fee Guidelines and what is expected of us.”

Notwithstanding the fiduciaries’ respective statements to the Division including those appearing in their December 29, 2017 Response, that “at all times” they have acted in compliance with the Fee Guidelines, the facts demonstrate that they have not been in compliance with the Fee Guidelines, as required. Jeannean’s statement to the Division, “I’m sure trying to, yes,” when asked if she was complying with the Fee Guidelines, those comments seem disingenuous, evidenced by the fiduciaries’ billing records and the timelines of the different CARRs.

Despite the Court alerting Jeannean and Nicole since at least April 2015 and possibly sooner, and continuing to alert them over several years, regarding, but not limited to, exceeding routine visits to wards and charging rates not commensurate with tasks performed, Jeannean continued to practice unresponsive or indifferent to the Court’s concerns and she continued seemingly impervious to change, evidenced by recurrent CARRs and persistent concerns raised by the Court, and further evidenced by the fiduciaries’ billing records.

On the application to be a licensed fiduciary, executed by Jeannean on April 22, 2008, and in a series of renewal applications, each required Jeannean to represent that she agreed to abide by or had read and reviewed ACJA §§7-201 and 7-202, applicable to licensed fiduciaries.

The ACJA §7-202(F)(10) requires any fiduciary to notify division staff if the fiduciary has knowledge that another licensed fiduciary has committed misconduct raising substantial question as to the fiduciary’s honesty, trustworthiness, or qualifications as a licensed fiduciary, the Division has no record of Jeannean contacting the Division regarding any such concerns for Nicole.

Allegation 5 is substantiated involving a) Jeannean.

*b) Nicole*

All the ACJA provisions cited at the beginning of Allegation 5 involving Jeannean apply to Nicole. The facts presented in the analysis of Allegation 5 involving Jeannean apply to Nicole.

As detailed in the Summary of Factual Findings of Investigation, and in the analysis of Allegation 5 involving Jeannean, the Division reviewed Court records including numerous CARRs issued to the fiduciaries. In addition to recurrent accounting inaccuracies and mistakes that were routinely highlighted by the Court's Accountants over numerous probate cases over years, the Court's Accountants also alerted the fiduciaries to problems with their billing practices because those billings were not in compliance with the Fee Guidelines.

Per the Summary of Factual Findings of Investigation, CARRs were issued in the following cases:

- 1) PB2013-071060 - CARR April 3, 2015
- 2) PB2015-002195 - CARR November 7, 2016 and September 27, 2017
- 3) PB2014-071019 - CARR February 23, 2017
- 4) PB2015-070951 - CARR October 11, 2017
- 5) PB2016-050160 – CARR November 7, 2017
- 6) PB2016-071488 – CARR February 13, 2018
- 7) PB2016-050493 - CARR March 26, 2018

These CARRs identify repeated concerns including, but not limited to:

- Exceeding the number of routine visits to wards by the guardian and/or staff;
- Multiple visits to wards by different staff members;
- Multiple staff attending meetings with wards/protected persons;
- Multiple staff attending court hearings;
- Multiple staff performing the same tasks;
- Fiduciary support staff accompanying the fiduciary to various meetings and doctor's appointments;
- Charging full fiduciary rates rather than a lower companion rate;
- Charging \$115.00 to obtain and deliver \$200.00 in cash;
- Excessive charges i.e. conservator charging \$120.50 to change a light bulb in one case
- Fiduciary performing various property management function (landscaping, locksmith and carpet work) in which fees were likely greater than the cost of the cost of carpet work performed);
- Travel to service providers to schedule an appointment when that could have been handled by a telephone call;
- Unnecessary communication between guardian and conservator;
- Not filing amended budgets after exceeding the budget;
- Duplicative charges;
- Charging records management fees (clerical – maintenance of files);
- Time and expense billed for mitigating errors.

As detailed in the Summary of Factual Findings of Investigation, the Court identified concerns with the fiduciaries charging excessive fees:

1) PB2013-07160

Pursuant to the November 1, 2016 Minute Entry of Honorable Justin McGuire, he noted that in response to the Court's concern, the conservator set up a system to permit delivery of monthly room and board payment which eliminated the need to hand deliver checks although the Court could find no reason why this system was not put in place prior to the beginning of the current accounting period. The Court determined that certain fees were unreasonable and unnecessary and disapproved fees including charging full fiduciary rates rather than companion rates and billing for excessive visits to wards.

2) PB2014-071019

The Honorable Frank Moskowitz's Minute Entry of September 11, 2017, found that the Court Accountant believed that the fiduciary fees remain high even after the \$1,050.50 credit adding that this is "at least the third Accounting by these fiduciaries where the Court Accountant has recently raised concerns with this Judicial Officer about their billings being high or excessive... The Court is concerned about the billing practices of these fiduciaries."

The Court, in part, demanded a breakdown of guardian's and conservator's fees and explanations as to why the fiduciaries are entitled to payment when it appeared that they were not in compliance with A.R.S. §§ 14-5109(A) 14-1104(b), 14-5109(c), Rule 33 (a) of the Arizona Rules of Probate Procedure, and Arizona Statewide Fee Guidelines.

3) PB2016-071488

In his Minute Entry of September 7, 2017, the Honorable Justin McGuire noted that the Court was in receipt of a report prepared by the Court Accountant which indicated that because of the "extraordinarily large amount of fees incurred" by the temporary guardian and conservator "during their very abbreviated appointment in this case, the case falls into the High Risk category."

4) PB2016-070706

The Honorable Justin McGuire, Minute Entry of October 18, 2017, in part, raised concerns about the fiduciary fees falling into the "High Risk" category based on the Court Accountant's report.

5) PB2015-002195

The May 18, 2018 Minute Entry of the Honorable Lori Horn Bustamante detailed concerns that the "Guardian and Conservatorship fees are high and consumed approximately 4% of the estate. The fees are higher than would be anticipated pursuant to the fee guidelines. For example, the fee guidelines suggest 5 hours per year to prepare the account and budget yet

the Conservator spent 31 hours. In addition, Ms. Frieders had a full time paid caregiver yet the Guardian appeared to be overly involved in the care of Ms. Frieders thereby incurring additional costs to the estate...the fiduciaries are hereby put on notice that they need to take steps in the future to be more mindful of the fee guidelines.”

6) PB2016-050160

The June 1, 2018 Minute Entry of the Honorable Andrew J. Russell detailed concerns with, but not limited to, block billing, multiple fiduciaries/staff attending hearing [charges of \$1,200.00 to attend June 20, 2016 hearing which lasted 32 minutes], multiple fiduciaries/staff billing for work where only one was needed, unreasonable billing, and charges for clerical or secretarial services.

As stated in the Summary of Factual Findings of Investigation, in PB2016- 050160, in addition to the above-noted issues, Commissioner Andrew Russell’s said Minute Entry detailed many unreasonable and unnecessary costs, as follows:

▪ *Unreasonable billing:*

- *Both JA and JMS billed for counting loose change found at Ms. Petro’s residence. Together they billed \$120 to count change that likely totaled much less.*
- *JA billed \$170 on 6/9/16 for “[a]ccompanied Jeannean to pick up boxes and traveled to Pathways to look at Irene’s room.” Two people were not needed for such a task.*
- *On 6/30/16, LB billed \$332.50 simply to accompany the Conservator while the Conservator closed accounts at Chase Bank and deposited money at Mutual of Omaha Bank. The protected person should not have to pay two people to do such tasks.*
- *NLS billed \$57.50 on 7/7/16 to go to the Glendale Social Security Administration office, only to leave because the line was too long. This service provided no benefit to the protected person.*
- *On 7/21/16, LB billed \$142.50 to return a vacuum to a neighbor. This amount may well have exceeded the value of the vacuum itself.*
- *SR billed \$92 on 10/18/16 to travel to a pharmacy and pick up Ms. Petro’s medications, only to find out that another of the Conservator’s employees retrieved the medications the previous day.*
- *To make it worse, SB then billed the protected person an additional \$23 to talk with the Conservator and apologize for SB’s own “confusion.” See SB’s fourth billing entry on 10/18/16. The Court cannot fathom why the Conservator believes it is appropriate to force the protected person to pay for miscommunication between the Conservator’s employees, and then pay even more for an employee’s apology for such miscommunication.*

The Court determined that the fiduciary’s fees and costs were egregious:

*IT IS ORDERED approving fiduciary fees and costs for the first accounting period in the amount of \$45,035.41. Any fees or costs paid to the Conservator above this amount (for the first accounting period) shall be repaid to the Conservatorship account no later than June 29, 2018.*

This represents a reduction of **\$39,000.00** [emphasis added] in excessive and unreasonable fiduciary fees and expenses from the \$84,035.41 submitted by the fiduciaries pursuant to Rule 33 to the Court's approving \$45, 035.41 in fiduciary fees and expenses.

In PB2015-002195, the CARR noted that in addition to exceeding the number of routine visits to the ward by the guardian and conservator and their staff, the Court's Accountant found that the guardian performed certain property management functions regarding landscaping and locksmith and the guardian charged for involving carpet work performed in which the fiduciary fees were "likely greater than the cost of the carpet work performed."

Other concerns noted in the CARR related to the guardian visiting the office of a service provider rather more effectively handling the issue by telephone. Personal visits were made to wards without calling ahead to ensure the ward was there and the ward was not there at the time of visit therefore resulting in no benefit to the ward.

As noted in the Summary of Factual Findings of Investigation, in probate case reviewed, the Division found that Nicole was not in compliance with the Fee Guidelines. Consistent with numerous CARRs referenced, the Division reviewed the fiduciaries' billings and noted similar issues including, but not limited to:

- Excessive visits with wards
- Unnecessary communications/staffing between guardian and conservator and their respective staff;
- Billing for tasks that exceeded the probable benefit to the ward or protected person;
- Billing at rates not commensurate with tasks;
- Multiple staff at Court hearings;
- Multiple staff performing the same tasks;
- Multiple staff meeting with wards at the same time;
- Multiple visits on any given day or successive days by different staff members in addition to the guardian and/or conservator;
- Many personal visits to simply "check on" wards;
- Block billing.

Consistent with the CARRs issued, fiduciary billing records demonstrated that Nicole approved Jeannean's billing despite that she frequently exceeded the number of routine visits to wards as allotted by §3-303 (3)(c)(3) and she continued to do despite the Court essentially putting her on notice in 2015, if not earlier, that she was exceeding the routine visits contrary to the Fee Guidelines, evidenced by the CARRs issued.

Per the CARR in PB2015-002190, Nicole approved charges of \$115.00 associated with obtaining and delivering a \$200.00 check to the protected person's caregivers. Nicole

billed and approved charges for her often traveling to Wells Fargo Bank to get cash which was then delivered to the protected person, all billed at full fiduciary rates rather than a companion rate and approved by the Conservator. The CARR also noted that Nicole charged 9.2 hours at a fiduciary rate (\$115.00 per hour) for a total charge of \$2,208.00 when she should have billed at a lower bookkeeper rate of \$85.00 per hour. Nicole approved charges of \$120.50 related to the property manager changing a fluorescent light bulb in the protected person's home.

As noted in the Summary of Factual Findings of Investigation, regarding PB2013-071060, on November 1, 2016 Commissioner J. Justin McGuire, at a Non-Appeal Hearing for the Second Annual Account Approved raised very specific concerns about the conservator's billing practices and issues a judicial finding that some of the billing practices were "not necessary or reasonable." Specific areas of concern were lack of a system to permit the delivery of monthly room and board payment which eliminated the need for hand delivering the check at a rate of \$55.00 per hour, the conservator's practice of charging the full fiduciary rate of \$105.00 per hour for accompanying the protected person on visits to the doctor, and fiduciary practice of visiting the protected person more than once per month and often more than once per week including visits where visits involved more than just checking in on the protected person when those tasks could have been accomplished by email or telephone call. As well, the fiduciaries charged full fiduciary rates to deliver things to the protected person's home conservator charged \$115.00 to obtain and deliver \$200.00 in cash to caregivers, property management functions performed by the fiduciary regarding carpet work performed in which the fiduciary fees were likely greater than the cost of the carpet work performed.

Per the Summary of Factual Findings of Investigation, the Division's review found that Nicole frequently exceeded the five (5) hours allowable time for preparing accountings and she billed estates to correct accountings and errors when those errors were pointed out in various CARRs.

- In PB2015-070937, Nicole and her staff billed 29.4 hours (\$3,111.50) on accounting related tasks from July 11, 2016 through September 20, 2016.
- In PB2015-070041, Nicole and staff billed 19.9 hours (\$2,089.50) for accounting related tasks from January 1, 2016 through March 14, 2016.
- In PB2015-070951, Nicole and staff billed 13.3 hours (\$1,271.50) for accounting related tasks from September 2, 2016 through September 29, 2016.
  - To make corrections per the CARR, Nicole and staffed billed 9.7 hours (\$1,115.50). Nicole also discounted 4.7 hours.
- In PB2015-002195, Nicole and staff billed 44.7 hours (\$4,860.50) for accounting related tasks from May 20, 2016 through January 19, 2017.

- To correct/amend the first annual accounting, Nicole and staff billed 8.7 hours (\$990.50).
- In PB2016-050160, Nicole and staff billed 9.0 hours (\$943.00) for accounting related tasks from March 16, 2017 through April 14, 2017.

Over many probate cases Nicole's accounting errors included:

- Beginning balances not agreeing with ending balances;
- Inventory and appraisement balance issues;
- Incorrectly stated inventory amounts;
- Failure to file inventory;
- Ending balance on account not agreeing with corresponding balances on bank statements;
- Incorrect accounting periods noted;
- Failure to provide copies of financial account statements;
- Failure to provide financial reconciliations or incorrect reconciliations were provided;
- Financial accounts not shown in the ending inventory but statements supporting the existence of accounts were previously submitted.

In PB2017-050011, the fiduciaries' office billed a total of \$258.00 for various tasks related to the Fiduciary Board regulatory complaint filed against them, contrary to ACJA §3-303(D)(2)(I):

*1. Time or expenses to respond or defend against a regulatory complaint against the professional and the professional's licensed business entity are not billable to the Estate.*

The Division notes that in this case, on June 20, 2017, the Court denied the fiduciaries' April 19, 2017 petition for guardianship and conservatorship because the Court found the proposed ward had sufficient capacity to revoke and draw up powers of attorney. Eventually, Jeannean and Nicole withdrew their request for fiduciary fees and costs of \$26,222.70 which were incurred from approximately March 21, 2017 through June 20, 2017. Although the proposed ward did not pay for those charges, the fiduciaries filed for compensation with the Court which included charges for tasks prohibited by the Fee Guidelines.

Referencing the Summary of Factual Findings of Investigation, as part of her Response to the Complaint, dated December 29, 2017 Jeannean and Nicole stated that "at all times" they have acted in compliance with the Fee Guidelines.

In her interview with the Division, Jeannean stated "I'm sure trying to, yes" when asked if she was complying with the Fee Guidelines.

In her interview with the Division, Nicole stated, "I've always been aware of the guidelines" and said she knew what was required of her regarding the Fee Guidelines.

Jeannean and Nicole told Division staff that their normal business practice was to audit and review their fiduciary fees and costs monthly and did so together. Nicole indicated that she reviews their fees to ensure compliance with the threshold set out in the Fee Guidelines.

Nicole told Division staff that she and Jeannean audit and review their fiduciary fees monthly, in part, to ensure compliance with thresholds set out in the Fee Guidelines. Nicole claimed that she reviews for accuracy, clerical and/or typographical errors, duplicative charges, block billing, time spent on tasks and to ensure that rates charged are commensurate with tasks performed. She stated that she immediately addresses and corrects any errors and makes determinations “based upon any types of credits or write-offs or no charges that we issue at that time.” Nicole also told Division staff that when reviews the guardian’s billings, Nicole does not review for “substantive information” and that she does not question Jeannean’s use of WLJ’s LPN nor does Nicole question the provision of geriatric care management services directly provided to wards by Jeannean.

The credits issued by the fiduciary are detailed in the Summary of Factual Findings of Investigation.

Division records also reflect that during an interview with Division staff on April 29, 2015, Nicole was asked, “How do you ensure compliance with the Statewide Fee Guidelines?” to which she replied, “We are compliant with Guidelines. Very much aware of Fee Guidelines and what is expected of us.”

Notwithstanding the fiduciaries’ respective statements to the Division that they operated in compliance with the Fee Guidelines, evidence presented in the Summary of Factual Findings of Investigation shows that the fiduciaries were not in compliance. Nicole’s statements appear to be misleading and disingenuous, evidenced by the facts presented in the Summary of Factual Findings of Investigation.

Despite the Court alerting Jeannean and Nicole since at least April 2015 and possibly earlier, and continuing to alert them over several years, regarding, but not limited to, exceeding routine visits to wards and charging rates not commensurate with tasks performed, Nicole continued to approve fees and costs that were inconsistent with standards of practice and were not in compliance with the ACJA §3-303. As stated in the analysis of Allegation 5 involving Jeannean, and in like manner, Nicole continued to practice in a manner which appears to be unresponsive or indifferent to the Court’s concerns and seemingly impervious to change, evidenced by recurrent CARRs and persistent concerns raised by the Court, and further evidenced by the fiduciaries’ billing records.

On the application to be a licensed fiduciary, executed by Nicole on March 9, 2012, and in a series of renewal applications, each required Nicole to represent that she agreed to abide by or had read and reviewed ACJA §§7-201 and 7-202, applicable to licensed fiduciaries.

The ACJA §7-202(F)(10) requires any fiduciary to notify division staff if the fiduciary has knowledge that another licensed fiduciary has committed misconduct raising substantial



question as to the fiduciary's honesty, trustworthiness, or qualifications as a licensed fiduciary, the Division has no record of Nicole contacting the Division regarding any such concerns for Jeannean.

Allegation 5 is substantiated involving b) Nicole.

***Allegation 6: Jeannean and Nicole restricted the family and friends of wards and vulnerable persons from visiting and/or contracting the ward/vulnerable person.***

*ACJA § 7-201(F)(1) and § 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained in § 7-202(J).*

*§ 7-202(J)(3)(a) and (b):*

*3. Decision Making. The fiduciary shall exercise extreme care and diligence when making decisions on behalf of a ward or protected person. The fiduciary shall make all decisions in a manner that promotes the civil rights and liberties of the ward or protected person and maximizes independence and self-reliance.*

*a. The fiduciary shall make all reasonable efforts to determine the preferences of the ward or protected person, both past and current, regarding all decisions the fiduciary is empowered to make.*

*b. The fiduciary shall make decisions in accordance with the determined preferences of the ward or protected person, past or current, in all instances except when the fiduciary is reasonably certain the decision will result in substantial harm.*

*§ 7-202(J)(4)(e):*

*e. The fiduciary shall not remove the ward from the home of the ward or separate the ward from family and friends unless this removal is necessary to prevent substantial harm or because of financial constraints. The fiduciary shall make every reasonable effort to ensure the ward resides at home or in a community setting.*

As noted in the Summary of Factual Findings of Investigation, Jeannean and Nicole denied that they have ever placed any restrictions on visitors and claimed that care facilities employ their own policies or protocols regarding two-week restrictions for all visitors when a new resident is placed into the facility. Jeannean told Division staff that she defers to the facility authority regarding its restrictions protocols and she does not challenge the protocols stating, "in 18 -20 years I have not." Further, Jeannean denied that she ever instructed or directed any facility staff to restrict or deny visits or contact between wards and their families and friends.

However, Division was aware of cases in which the fiduciary was directly involved in the restriction and/or denying of visitation and contact:

- 1) PB2017-050011
- 2) PB2015-070041

In PB2017-050011, billing records of April 22, 2017, showed that Jeannean and Nicole restricted access. The day after the fiduciaries placed the proposed ward, Janette, into a memory care facility, Jeannean spoke with Lazzell, the proposed ward's niece, and asked her to "try to limit her visit to one hour" so that staff could encourage Janette to attend programming. Jeannean also told Lazzell that Myers would not be allowed to visit. Jeannean contacted Nicole (POA) asking her to "call Rock Creek to lift the visit restrictions and to restrict Dennis Myers and his daughter, Danina [sic] permanently." Nicole contacted Rock Creek "to advise them that Bonnie [Lazzell] will be permitted to visit for 1 hour today." Other communications showed that Nicole contacted her attorney to discuss the "no visit requirements at Rock Creek" and how to best proceed with "being respectful of out of town family visiting." On April 24, 2017, WLJ staff billed for calling Rock Creek to "fax over restriction list."

On April 26, 2017, Nicole and Jeannean billed for communication regarding Rock Creek staff, Cindy, who called the fiduciary's office because Lazzell and another family member visited Janette and facility staff did not know who they were until they passed through the doors. Jeannean drafted and sent a message to Nicole asking her to call Rock Creek to ask that Lazzell and Taylor leave as there is still a transition time for Janette. When speaking with Cindy, Jeannean "requested that Cindy ask them to leave per Nicole's request, and Rock Creek protocol for new residents."

Jeannean told Division staff that Rock Creek has an internal protocol regarding restriction for visitors during the first two weeks of someone's admission to allow for a transitional period.

However, Robinson, Director of Nursing at Rock Creek, told Division staff that while Rock Creek may have house rules regarding visitation, it was the fiduciary's office that directed all visitation and said that Rock Creek "didn't have a say who go to...we would have, unfortunately, be the ones to have to enforce it." Robinson said, typically, the fiduciary's office would send the facility a memo or fax regarding who is allowed or not allowed. The Division was unable to obtain any of those above-mentioned records from Rock Creek. In addition, the fiduciaries indicated that they provided a full record to the Division, as requested, pertinent to emails and records involving Rock Creek, but the records furnished did not include any faxes or communications related to restriction of visitation despite Robinson's information to the Division what appears on the fiduciary's billing records.

In PB2015-070041, the ward's daughter told Division staff that the fiduciaries continued to move her mother into increasingly restrictive facilities each further away from family. Sheila said the fiduciaries disallowed her to visit her mother for three weeks after her mother was placed into a facility even though Sheila had been actively visiting her mother before. Sheila said she called the fiduciary's office weekly to inquire when she could start visiting and was frequently told "not yet" and eventually after being allowed to visit, Sheila

said the fiduciaries controlled how long she could visit telling her “one or two hours a week, that’s all you need with your mom.”

ACJA § 7-202(J)(4)(e):

e. The fiduciary shall not remove the ward from the home of the ward or separate the ward from family and friends unless this removal is necessary to prevent substantial harm or because of financial constraints. The fiduciary shall make every reasonable effort to ensure the ward resides at home or in a community setting.

Per the Summary of Factual Findings of Investigation, Jeannean denied that she was involved in placing restrictions on visitors and said she defers to facilities’ internal policies or protocols regarding restrictions.

However, it is the fiduciary’s decision to determine what is in the best interest of a ward. As this pertains to separating the ward from family or friends, fiduciaries are compelled to ensure that separation or isolation from family and significant relations only happen if this is “necessary to prevent substantial harm or because of financial constraints.” Certainly, transitional periods may be required and can be difficult for wards. A fiduciary must be practical when determining if restricting visitation is proper and, if so, how long the restriction should be applied.

On the application to be a licensed fiduciary, executed by Nicole on March 9, 2012, and in a series of renewal applications, each required Nicole to represent that she agreed to abide by or had read and reviewed ACJA §§7-201 and 7-202, applicable to licensed fiduciaries.

On the application to be a licensed fiduciary, executed by Jeannean on April 22, 2008, and in a series of renewal applications, each required Jeannean to represent that she agreed to abide by or had read and reviewed ACJA §§7-201 and 7-202, applicable to licensed fiduciaries.

The ACJA provides that separating wards from family and friends must meet the test that it be done to prevent “substantial harm.” Per the facts presented in the Summary of Factual Findings of Investigation, it did not appear that any of the wards or vulnerable persons identified herein, would be subjected to “substantial harm” if those visits with family and friends occurred.

Allegation 6 is substantiated for a) Jeannean and b) Nicole.

***Allegation 7: Jeannean and Nicole transacted business under an assumed name.***

*ACJA § 7-201(F)(1) and § 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained in § 7-202(J).*

*§7-201(H)(6)(a):*

*6. Grounds for Discipline. A certificate holder is subject to disciplinary action if the board finds the certificate holder has engaged in one or more of the following:*

- a) Failed to perform any duty to discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, this section or the applicable section of the ACJA;*

§ 7-201(E)(6):

*6. Cease and Desist Order. The board, upon completion of an investigation or disciplinary proceeding, may issue a cease and desist order pursuant to subsection (H)(24)(a)(6)(g). A hearing officer or a superior court judge, upon petition by the board, may enter an order for an individual or business entity to immediately cease and desist conduct constituting engagement in the practice of the profession or occupation without the required certification.*

§ 7-201(F)(3):

*3. Assumed Business Name. A certificate holder shall not transact business in this state under an assumed name or under any designation, name or style, corporate or otherwise, other than the legal name of the individual or business entity unless the person or business entity files with division staff a statement indicating the name for transaction of the business and the legal full name of the certificate holder.*

As detailed in the analysis of Allegation 3, in PB2013-071060 and PB2015-002195 Jeannean filed an Affidavit of Person to be Appointed Guardian and Conservator, identify herself, license number and “dba With Love, Jeannean, LLC, an Arizona limited liability company.” Letters of Acceptance issued also identified the “dba” accordingly. In other probate cases, Letters identified Jeannean and “dba.”

In PB2015-002195, Nicole filed an Affidavit of Person to be Appointed Guardian and Conservator, identify herself, license number and “dba Nicole Lynn Sabatina LLC.” The Letters issued identified the “dba” accordingly. In other probate cases, the Letters issued identified Nicole and the “dba” as either Nicole Lynn Sabatina, LLC or With Love, Jeannean, LLC.

Fiduciary billings, included in annual accountings filed with the Court, identified the two referenced “dba” (WLJ and Nicole L. Sabatina, LLC).

As noted in the analysis of Allegation 3, WLJ’s website features information that the business primarily offers quality of life care management for impaired adults. Much of the website identifies the provision of various non-fiduciary services. The website does not acknowledge that WLJ is a fiduciary business although there is a reference to the fiduciaries being able to serve as fiduciaries if required.

In their respective interviews with Division staff, pursuant to this complaint, Jeannean and Nicole expressed intention to license WLJ as a fiduciary business entity. At the time of this report, the Division has no record of any such application. Therefore, Jeannean and Nicole transacted fiduciary business under the assumed name of With Love, Jeannean, LLC and Nicole Lynn Sabatina, LLC, contrary to the provisions of ACJA § 7-201(F)(3). Jeannean and Nicole should not be operating as licensed fiduciaries doing business as “With Love, Jeannean, LLC,” and/or “Nicole L. Sabatina, LLC,” because the two limited liability companies are not licensed business entities in Arizona.

On the application to be a licensed fiduciary, executed by Nicole on March 9, 2012, and in a series of renewal applications, each required Nicole to represent that she agreed to abide by or had read and reviewed ACJA §§7-201 and 7-202, applicable to licensed fiduciaries.

On the application to be a licensed fiduciary, executed by Jeannean on April 22, 2008, and in a series of renewal applications, each required Jeannean to represent that she agreed to abide by or had read and reviewed ACJA §§7-201 and 7-202, applicable to licensed fiduciaries.

Allegation 7 is substantiated involving a) Jeannean and b) Nicole.

***Allegation 8: Jeannean and Nicole failed to report violations of fiduciary misconduct, in violation of § 7-202(F)(10).***

*ACJA § 7-201(F)(1) and § 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained in § 7-202(J).*

*ACJA §7-201(H)(6)(a), (g), (h), (j) and (k)(6), (7) and (8):*

*6. Grounds for Discipline. A certificate holder is subject to disciplinary action if the board finds the certificate holder has engaged in one or more of the following:*

*b) Failed to perform any duty to discharge any obligation in the course of the certificate holder’s responsibilities as required by law, court rules, this section or the applicable section of the ACJA;*

*g. Exhibited gross negligence;*

*h. Exhibited incompetence in the performance of duties;*

*j. The existence of any cause for which original certification or renewal of certification could have been denied pursuant to subsections (E)(2)(c) or (G)(4)(c) and the applicable section of the ACJA;*

*k. Engaged in unprofessional conduct, including:*

*(6) Failed to practice competently by use of unsafe or unacceptable practices;*

*(7) Failed during the performance of any responsibility or duty of the profession or occupation to use the degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent professional certificate holder engaged in similar practice under the same or similar conditions regardless of any level of harm or injury to the client or customer;*

*(8) Failed to practice competently by reason of any cause on a single occasion or on multiple occasions by performing unsafe or unacceptable client or customer care or failed to conform to the essential standards of acceptable and prevailing practice;*

*ACJA §7-201(E)(2)(c)(2)(b)(iii):*

*(2) The board may deny certification of any applicant if one or more of the following is found:*

*(b) The applicant or an officer, director, partner, member, trustee, or manager of the applicant:*

*(iii) Has conduct showing the applicant or an officer, director, partner, member, trustee, or manager of the applicant is incompetent or a source of injury and loss to the public;*

*ACJA §7-201(G)(4)(c):*

*4. Decision Regarding Renewal.*

*c. The board may deny renewal of certification for any of the reasons stated in subsection (E)(2)(c).*

*ACJA §7-202(J)(2):*

*2. Relationship with the Ward or Protected Person. The fiduciary shall exhibit the highest degree of trust, loyalty, and fidelity in relation to the ward, protected person, or estate.*

*ACJA § 7-202(F)(10):*

*10. Reporting of Possible Violations. A fiduciary shall notify division staff if the fiduciary has knowledge that another licensed fiduciary has committed misconduct raising a substantial question as to the fiduciary's honesty, trustworthiness, or qualifications as a licensed fiduciary. This fiduciary shall make this notification in compliance with ACJA § 7-201(H).*

As licensed fiduciaries, Jeannean and Nicole are mandated to report, to Division staff, knowledge of possible violations of any fiduciary misconduct raising substantial concern

as to another fiduciary's honesty and trustworthiness. Jeannean and Nicole are, foremost, mother and daughter, respectively, and business partners in WLJ and therefore, unlikely that either would be willing to report any violation against the other.

However, professional responsibilities transcend familial and business relations. The facts presented in the Summary of Factual Findings of Investigation, demonstrate that there were numerous and recurrent violations of the pertinent ACJA, Rules and regulations governing fiduciary practice. Those violations were committed by Jeannean and Nicole and occurred over years.


Allegation 8 is substantiated involving a) Jeannean and b) Nicole.

**SUBMITTED BY:**

  
PASQUALE FONTANA, Investigator  
Certification and Licensing Division

6/22/18  
Date

**REVIEWED BY:**

  
MARK WILSON, Division Director  
Certification and Licensing Division

6/22/18  
Date

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**DECISION OF THE PROBABLE CAUSE EVALUATOR:**

Having conducted an independent review of the facts and evidence gathered during the course of the investigation of complaint number **17-0027-17-0028**, the Probable Cause Evaluator, as it pertains to Jeannean Sabatina:

- ☐ requests division staff to investigate further.
- ☐ determines probable cause does not exist the certificate holder has committed the alleged acts of misconduct as to Allegation(s):
- ☒ determines probable cause exists the certificate holder committed the alleged acts of misconduct as to Allegation(s):

#1, 2, 3, 4, 5, 6, 7, and 8.

Having conducted an independent review of the facts and evidence gathered during the course of the investigation of complaint number **17-0027-17-0028**, the Probable Cause Evaluator, as it pertains to Nicole Sabatina:

☐ requests division staff to investigate further.

☐ determines probable cause does not exist the certificate holder has committed the alleged acts of misconduct as to Allegation(s):

☒ determines probable cause exists the certificate holder committed the alleged acts of misconduct as to Allegation(s):

#s 1, 2, 3, 4, 5, 6, 7, and 8.

Mike Baumstark

Mike Baumstark  
Probable Cause Evaluator

6/26/18

Date



**ARIZONA SUPREME COURT  
ADMINISTRATIVE OFFICE OF THE COURTS  
ORDER OF THE BOARD**

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<b><i>CERTIFICATE</i></b>	<b>Certificate Holder:</b>	Jeannean Sabatina
<b><i>HOLDER</i></b>	<b>Certification Number:</b>	20615
<b><i>INFORMATION</i></b>	<b>Certificate Holder:</b>	Nicole Sabatina
	<b>Certification Number:</b>	20684
	<b>Type of Certificate/License:</b>	Individual

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**RECOMMENDATION:**

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Jeannean Sabatina and Nicole Sabatina have committed the alleged act(s) of misconduct as detailed in the Investigation Summary and Allegation Analysis Report in complaints number 17-0027 and 17-0028.

It is further recommended the Board enter a finding grounds for formal disciplinary action exists pursuant to Arizona Code of Judicial Administration ("ACJA") § 7-201(H)(6) for act(s) of misconduct involving:

1. ACJA §§ 7-201(H)(6)(a)(g), (h), (j) and (k)(6), (7), and (8); 7-201(E)(2)(c)(2)(b)(iii); 7-201(G)(4)(c) and 7-202(J)(2)(a), (b)(1), (b)(2) and (b)(3)(a) by the appearance of self-dealing, self-dealing, appearance of conflict of interest and conflict of interest.
2. ACJA §§ 7-201(H)(6)(a), (g), (h) and (k)(6), (7) and (8); 7-202(J)(1)(a) and (c)(2) and (3) by filing misleading or false estate budgets with the court.
3. ACJA §§ 7-201(H)(6)(a), (g), (h) and (k)(6), (7) and (8); 7-202(J)(1)(a) and (c)(2) and (3); Arizona Rules of Probate Procedure Rule 20; A.R.S. §14-5106(A)(2), (4) and (11) by filing misleading or false Affidavit of Persons to be Appointed Guardian and/or Conservator.
4. ACJA §§ 7-201(H)(6)(a), (g), (h) and (k)(6), (7) and (8); 7-202(J)(1)(a), (b) and (c)(2) and (3); and Arizona Rules of Probate Procedure Rule 30.3 by exceeding judicially approved budgets, failing to timely file amended budgets and failing to seek judicial approval to exceed approved budgets.
5. ACJA §§ 7-201(H)(6)(a), (g), (h) and (k)(6), (7) and (8); 7-201(E)(2)(c)(2)(b)(iii); 7-201(G)(4)(c); 3-303(C); 3-303(D)(2)(c), (g)(2), (k) and (l); 303(D)(3)(c)(1), (3), (4) and (l), (m) and (q) by failure to comply with the statewide fee guidelines.
6. ACJA §§ 7-202(J)(3)(a) and (b); 7-202(J)(4)(e) by restricting family and friends from access to the ward.
7. ACJA §§ 7-201(H)(6)(a); 7-201(E)(6); 7-201(F)(3) by acting under an assumed name.

8. ACJA §§ 7-201(H)(6)(a), (g), (h), (j) and (k)(6), (7) and (8); 7-201(E)(2)(c)(2)(b)(iii); 7-201(G)(4)(c); 7-202(J)(2); 7-202(F)(10) by failing to report fiduciary misconduct.

It is further recommended that the Board enter a Cease and Desist Order against With Love, Jeannean, LLC prohibiting With Love, Jeannean from engaging in fiduciary activities and authorizing Division staff to take such steps as necessary to enforce this Order.

Mitigating Factors: None

Aggravating Factors:

1. Dishonest motive
2. Selfish motive
3. Multiple offenses
4. Vulnerable victim
5. Substantial experience in the profession
6. Alerted to issues by Superior Court

It is recommended that the Board enter an order revoking the licenses of Jeannean Sabatina and Nicole Sabatina.

**SUBMITTED BY:**

 7/2/18

Mark Wilson, Division Director      Date  
Certification and Licensing Division

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**FINAL DECISION AND ORDER – Jeannean Sabatina:**

The Board having reviewed the above Investigation Summary, Allegation Analysis Report, finding of the Probable Cause Evaluator, and Recommendation regarding complaint number 17-0027 and 17-0028 and Jeannean Sabatina, license numbers 20615, makes a finding of facts and this decision, based on the facts, evidence, and analysis as presented and enters the following order:

- ☐ requests division staff to investigate further.
- ☐ refers the complaint to another entity with jurisdiction.

Referral to: \_\_\_\_\_

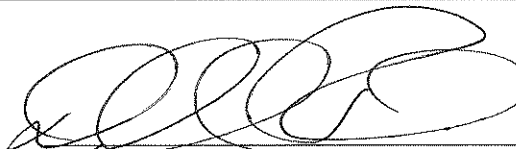
- ☐ dismisses the complaint, and:

- ☐ requests division staff prepare a notice of dismissal pursuant to ACJA § 7-201(H)(5)(c)(1).
- ☐ requests division staff prepare a notice of dismissal and an Advisory Letter pursuant to ACJA § 7-201(H)(5)(c)(2).
- ☐ determines grounds for discipline exist demonstrating the certificate holder committed the alleged act(s) of misconduct and:
  - ☐ enter a finding the alleged act(s) of misconduct or violation(s) be resolved through informal discipline, pursuant to ACJA § 7-201(H)(7) and issue a Letter of Concern.
  - ☐ enter a finding the alleged act(s) of misconduct or violation(s) be resolved through formal disciplinary proceeding, pursuant to ACJA § 7-201(H)(9).
- ☐ requests the certificate holder appear before the Board to participate in a Formal Interview, pursuant to ACJA § 7-201(H)(8).
- ☐ orders the filing of Notice of Formal Charges, pursuant to ACJA § 7-201(H)(10).
- ☐ enters a finding the public health, safety or welfare is at risk, requires emergency action, and orders the immediate emergency suspension of the certificate and sets an expedited hearing for:

Date, Time, and Location: \_\_\_\_\_

- ☒ adopts the recommendations of the Division Director.
- ☐ does not adopt the recommendations of the Division Director and orders:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

  
 Deborah Primock, Chair  
 Fiduciary Board

Date 7/12/18

**FINAL DECISION AND ORDER – Nicole Sabatina:**

The Board having reviewed the above Investigation Summary, Allegation Analysis Report, finding of the Probable Cause Evaluator, and Recommendation regarding complaints number 17-0027 and 17-0028 and Nicole Sabatina., license number 20684, makes a finding of facts and this decision, based on the facts, evidence, and analysis as presented and enters the following order:

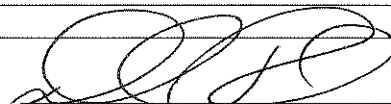
- ☐ requests division staff to investigate further.
- ☐ refers the complaint to another entity with jurisdiction.

Referral to: \_\_\_\_\_

- ☐ dismisses the complaint, and:
  - ☐ requests division staff prepare a notice of dismissal pursuant to ACJA § 7-201(H)(5)(c)(1).
  - ☐ requests division staff prepare a notice of dismissal and an Advisory Letter pursuant to ACJA § 7-201(H)(5)(c)(2).
- ☐ determines grounds for discipline exist demonstrating the certificate holder committed the alleged act(s) of misconduct and:
  - ☐ enter a finding the alleged act(s) of misconduct or violation(s) be resolved through informal discipline, pursuant to ACJA § 7-201(H)(7) and issue a Letter of Concern.
  - ☐ enter a finding the alleged act(s) of misconduct or violation(s) be resolved through formal disciplinary proceeding, pursuant to ACJA § 7-201(H)(9).
- ☐ requests the certificate holder appear before the Board to participate in a Formal Interview, pursuant to ACJA § 7-201(H)(8).
- ☐ orders the filing of Notice of Formal Charges, pursuant to ACJA § 7-201(H)(10).
- ☐ enters a finding the public health, safety or welfare is at risk, requires emergency action, and orders the immediate emergency suspension of the certificate and sets an expedited hearing for:

Date, Time, and Location: \_\_\_\_\_

- ☒ adopts the recommendations of the Division Director.
- ☐ does not adopt the recommendations of the Division Director and orders:

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Deborah Primock, Chair  
Fiduciary Board

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7/12/18  
Date

**FINAL DECISION AND ORDER – With Love, Jeannean, LLC:**

The Board having reviewed the above Investigation Summary, Allegation Analysis Report, finding of the Probable Cause Evaluator, and Recommendation regarding complaints number 17-0027 and 17-0028 and With Love, Jeannean, LLC, makes a finding of facts and this decision, based on the facts, evidence, and analysis as presented and enters the following order:

- ☐ requests division staff to investigate further.
- ☐ refers the complaint to another entity with jurisdiction.

Referral to: \_\_\_\_\_

- ☐ dismisses the complaint, and:
  - ☐ requests division staff prepare a notice of dismissal pursuant to ACJA § 7-201(H)(5)(c)(1).
  - ☐ requests division staff prepare a notice of dismissal and an Advisory Letter pursuant to ACJA § 7-201(H)(5)(c)(2).
- ☐ determines grounds for discipline exist demonstrating the certificate holder committed the alleged act(s) of misconduct and:
  - ☐ enter a finding the alleged act(s) of misconduct or violation(s) be resolved through informal discipline, pursuant to ACJA § 7-201(H)(7) and issue a Letter of Concern.
  - ☐ enter a finding the alleged act(s) of misconduct or violation(s) be resolved through formal disciplinary proceeding, pursuant to ACJA § 7-201(H)(9).
- ☐ requests the certificate holder appear before the Board to participate in a Formal Interview, pursuant to ACJA § 7-201(H)(8).
- ☐ orders the filing of Notice of Formal Charges, pursuant to ACJA § 7-201(H)(10).
- ☐ enters a finding the public health, safety or welfare is at risk, requires emergency action, and orders the immediate emergency suspension of the certificate and sets an expedited hearing for:

Date, Time, and Location: \_\_\_\_\_

- ☒ adopts the recommendations of the Division Director.
- ☐ does not adopt the recommendations of the Division Director and orders:

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\_\_\_\_\_  
Deborah Primock, Chair  
Fiduciary Board

7/12/18  
Date